UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	Case No. 10-36282
DONNA MARIE FRALEIGH,	Chapter 7
Debtor.	
BRIAN FRALEIGH,	Case No. 10-09091 (CGM)
Plaintiff,	
vs.	355 Main Street Poughkeepsie, NY 12601
DONNA MARIE FRALEIGH,	
Defendant .	April 11, 2012 10:06 a.m.

TRANSCRIPT OF TRIAL
BEFORE HONORABLE CECELIA G. MORRIS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Plaintiff: Genova & Malin, Attorneys
By: ANDREA B. MALIN, ESQ.
The Hampton Center
1136 Route 9
Wappingers Falls, NY 12590-4332
(845) 298-1265
Fax: (845) 298-1265
Email: genmallaw@optonline.net

Audio Operator: Frances J. Fredericks

Transcription Company: Ad Hoc Transcription, LLC
241 Sussex Avenue
Newton, New Jersey 07860
(862) 258-7656
www.adhoctranscription.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (Continued):

For Defendant: Thomas W. Bauer, Esq., CPA
By: THOMAS W. BAUER, ESQ.
42 Catharine Street
Poughkeepsie, NY 12601
(845) 452-5076
Fax : (845) 452-5657
Email: twbauer@frontiernet.net

INDEX
4/11/12

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE PLAINTIFF				
Christopher Sekul	12	94	95	--
Charles Goldsmith	99	--	--	--
Susan Rivard	102	--	--	--
Melissa Karchmer	106	--	--	--
Martin Conroy	109	--	--	--
Florence Conroy	111	--	--	--
Arne Christensen	114	--	--	--
Andrew Stone	116	--	--	--
Corey Madison	120	--	--	--
Donna Fraleigh	137	244	335	--
Brian Juran	344	360	--	--
FOR THE DEFENDANT				
Donna Fraleigh	363	366	--	--

EXHIBITS	PAGE
Defendant's A - Bank Statements	190
Plaintiff's 9 - Checks	327
Plaintiff's 1 - Pay stubs	362

THE COURT: This is case number -- it was Adversary Proceeding Number 10-09091 in the matter of Fraleigh v. Fraleigh. State your name and affiliation.

MS. MALIN: Your Honor, it's Andrea B. Malin with the firm of Genova & Malin appearing on behalf of the plaintiff who is with me here at counsel table as well as Lisa Hartley who is also admitted to the Southern District who will be aiding me with the trial today.

THE COURT: Okay.

MR. BAUER: Good morning, Your Honor. Thomas Bauer for the debtor defendant who is with me at counsel table.

THE COURT: Very good. I understand we have a witness that's not happy.

MS. MALIN: Needs to get --

UNIDENTIFIED: I'm in a big hurry.

THE COURT: Excuse me, ma'am. I'll talk to you when it's time to talk to you.

Whose witness is she?

MS. MALIN: That's my witness, Your Honor.

THE COURT: And what is she here for?

MS. MALIN: She's here to testify as to additional income into the household of Mr. Sekul.

THE COURT: Okay. And --

MS. MALIN: And I can --

THE COURT: Go ahead.

MS. MALIN: I'm sorry. I've spoken to her. I know what her problem is. I've spoken to the other witnesses and I'm more than happy and Mr. Bauer is more than happy to let those witnesses go first so that they can leave the courtroom as quickly as possible. There are other concerns. One of the witnesses has a mother at home that is unfortunately blind and can't stay by herself for a long period of time, so I've arranged to call them as quickly as possible.

THE COURT: Okay.

MR. BAUER: My only objection at this point is Ms. Hartley being up at counsel table. I'm just having confusion as to why she's here other than for intimidation. We had this issue at the --

THE COURT: There is no intimidation. I won't allow it. She's an attorney. She's admitted, but I do wonder it too. Is she related to Mr. Fraleigh?

MS. MALIN: She's not related to him, Your Honor, but --

THE COURT: She's living with him?

MS. MALIN: And it's just to help me with the trial. We will be co-trying this.

THE COURT: So we do understand we -- this is a monetary issue but we do understand that -- everybody understands that there is a relationship here, and I will be totally aware of that, Mr. Bauer, because I'm not necessarily happy with it either.

MR. BAUER: Thank you, Your Honor.

THE COURT: But I don't know that I can exclude it because it's a monetary thing I'm sure.

MR. BAUER: My only --

THE COURT: I've been heard, right?

MS. HARTLEY: Yes, Your Honor.

THE COURT: Very good. I think I got my message across.

MR. BAUER: Yes, Your Honor.

THE COURT: I was going to do the same thing. I'll tell you what right now, everybody. Everybody. You two sit down. This is a trial in a courtroom. It is not daytime TV. You may have emergencies -- I have emergencies -- but you're not going to bring drama into my courtroom. Am I clear?

You have been subpoenaed as witnesses. You will act like witnesses in a federal court. Am I clear?

You're a professional attorney. You're professional attorneys. You're going to act like professional attorneys in my courtroom. I will walk off this bench if anybody starts trying to bring drama into this courtroom.

Now then, you have a case. I want it presented in a way that tells a story to me. I'm the one that's making the decision in this court, nobody else. It's your -- at this point we have narrowed this issue. We have a very, very narrow issue. We all understand that. The professionals understand that and that's your story today is that narrow issue, and it's yours.

Ms. Malin, any preliminaries?

MR. BAUER: I would just like to have an opening statement, Your Honor.

THE COURT: Certainly.

MR. BAUER: I don't know if plaintiff wants an opening statement but if she --

THE COURT: If it's any more than the joint trial I don't want to hear it.

MR. BAUER: Okay. Does plaintiff wish to make an opening statement?

THE COURT: I don't -- it's not a jury trial. We know what the issue is. What do you want to tell me in an opening statement? Again, if it's to do some -- add to this drama, forget it. If it's to add to my knowledge because I'm the one doing the trial, you can add to my knowledge.

MR. BAUER: I just want to open with plaintiff will -- the evidence will show that the plaintiff failed substantially in proving its case.

THE COURT: You're going to get to say that when it comes time for her after she's presented her evidence.

MR. BAUER: I would like Your Honor to focus on the date at issue should be the petition date and not --

THE COURT: I know that, Mr. Bauer.

MR. BAUER: Yes, Your Honor. Thank you very much.

THE COURT: I truly am a professional also.

Ms. Malin.

MS. MALIN: We're ready. I'm not --

THE COURT: It's the petition date. We all know that.

MS. MALIN: Well, it's not only the petition date. It's six months --

THE COURT: Yes, it is. Begin your --

MS. MALIN: Six months prior to.

THE COURT: Begin your evidence.

MS. MALIN: Your Honor, first as a preliminary just for myself, I would like to ask that the witnesses be sequestered in the witness rooms. There is witness testimony that I think we need to have outside of the hearing of the other --

THE COURT: Sequester the witnesses. If you will, take all the witnesses out. Yep.

Everybody that's going to be a witness, raise your right hand and look at me. Everybody raise your -- but wait, everybody that's a witness, stand up and raise your right hand.

(Witnesses sworn.)

THE COURT: Very good. Take the witnesses.

MR. BAUER: Your Honor, with respect to rebuttal witnesses, I believe the plaintiff has said that the plaintiff himself is going to be rebuttal witness. My only concern then would be maybe I need to call Ms. Hartley as --

THE COURT: He's the plaintiff.

MR. BAUER: -- as a rebuttal witness, as well. So I -- again I --

THE COURT: You just reserved your right to do so.

MR. BAUER: Thank you. And she doesn't have to be sequestered?

THE COURT: Is she on the witness list?

MS. MALIN: No.

MR. BAUER: She's not on the witness list.

THE COURT: Nope. Okay, Ms. Malin.

MS. MALIN: Your Honor, as my first witness I'd like to call -- I'm sorry, I should ask you but --

THE COURT: That's all right. That's all right.

MS. MALIN: Christopher Sekul who was one of the witnesses that was -- has just been escorted out.

THE COURT: Okay.

MS. MALIN: Would you like me to go --

THE COURT: Would you -- yeah, you do it. Witnesses complain all they want to. This is not a doctor's appointment.

MR. BAUER: I believe this witness's name is pronounced Sekul, and Ms. Malin was -- we had an issue with a 2004 exam with this, but his name is --

THE COURT: Mr. Bauer.

MR. BAUER: -- Mr. Sekul, Your Honor, just for the record.

THE COURT: Ms. Malin's name gets mispronounced all the time. So do mine. So do yours. It's no big deal. I know who it is.

MS. MALIN: And I will try to remember it's Sekul.

THE COURT: I'm telling you right now take the drama out. Who cares what his name is? We know who he is. Give it up. Just don't call me Cele instead of Cecilia. I understand when things like that happen. Get him in here.

This way, walk up that ramp, please.

MR. SEKUL: Thank you.

THE COURT: Good morning.

MR. SEKUL: Thank you, Your Honor.

THE COURT: I noticed you in the courtroom so you've already taken the oath.

MR. SEKUL: Yes.

THE COURT: So if you'll please sit down and I'll remind you that you're under oath and give us your full name and address.

CHRISTOPHER SEKUL, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE WITNESS: Thank you, Your Honor. Christopher Sekul, middle initial P. Physical or mailing address, Your Honor?

THE COURT: Physical.

THE WITNESS: Physical address is 30 Battenfeld Road, Milan, New York 12571.

THE COURT: Very good. Ms. Malin, he's your witness.

MS. MALIN: Thank you, Your Honor. I'm going to dispense with the introduction since we've all been introduced on the record.

THE COURT: You do know Ms. Malin?

THE WITNESS: Yes, I do.

THE COURT: Okay.

THE WITNESS: And actually a point of order, Your Honor, she mispronounced my name before. It's been a problem in previous --

THE COURT: Mr. Sekul --

THE WITNESS: Sekul, right.

THE COURT: -- I said take the drama out.

THE WITNESS: Okay. No, that's fine.

THE COURT: We all get our names mispronounced.

THE WITNESS: Very well.

THE COURT: It's not a big deal.

THE WITNESS: Very well.

THE COURT: You should have some of the names of the people that come before me.

THE WITNESS: Really, huh?

THE COURT: Yes, exactly.

THE WITNESS: Thank you.

THE COURT: So just let it be.

THE WITNESS: Very well.

THE COURT: The record is going to spell it right.

THE WITNESS: All right.

MS. MALIN: Your Honor, you dispense with -- you've asked him his name and his address so I'm going to dispense with that.

DIRECT EXAMINATION

BY MS. MALIN:

Q As you have stated on the record, you live at 30 Battenfield (sic) Road in Milan, New York?

A Yeah, it's actually Battenfeld. I don't know how you have it spelled.

Q Okay. How long have you resided there?

A It was a split because the -- I lost the house to fire and moved away from it for a while, but I've owned the property since 1995.

Q And do you know Donna Fraleigh, the debtor here today?

A Yes, I do.

Q And can you tell me how you met Ms. Fraleigh?

A A friend of a friend introduced us.

Q And when was that, sir?

A Sometime back in '04.

Q In 2004, sir?

A Yes.
Q Okay. And can you explain to me what your relationship with Ms. Fraleigh was back in 2004?
A We started dating.
Q And you would've started dating in 2004?
A Right.
Q Around when you first met?
A Right, yeah.
Q Did there come a time when Ms. -- yourself and Ms. Fraleigh started to have a relationship more serious than dating?
A Yeah. I mean, I don't remember the dates but yes, absolutely.
Q And can you explain that relationship for the Court?
A We dated, we had an intimate relationship, we saw each other on a regular basis, and we eventually moved in together.
Q And can you tell me when you moved in together, sir?
A Again kind of complicated because of the fire, but we were in the process of moving in together into my residence back in the summer of '06. Right around the time that we started moving in together the house burned down, but we did move in to a rental property right after the house burned.
Q So just so I get it correct for the record, you moved in together in your house at -- it's Battenfeld?
A We were starting to move in together at the Battenfeld house.

Q Okay.
A Before we really ever spent the night there the house burned to the ground.
Q And then you -- the two of you resided in a rental property?
A We moved into the rental property right away after that.
Q Okay. And did anyone else live with you in that rental property, sir?
A Yes.
Q And who was that?
A My son, Christopher, same last name as mine. Actually it's hyphenated. It's Hey-Sekul, H-E-Y dash Sekul. My daughter Melissa, same way, hyphenated Hey-Sekul.

THE COURT: What was her name, I'm sorry?

THE WITNESS: Melissa.

THE COURT: Melissa? Okay.

THE WITNESS: M-E-L-I-S-S-A.

THE COURT: All right.

MR. BAUER: I just want to object as to the relevance of this. We're talking about 2004 and --

THE COURT: We're getting there.

MR. BAUER: -- this was filed in 2010.

THE COURT: I have to admit that I'm curious about this. So I know it's six months before and I don't necessarily -- excuse me. I'm going to tell you what I'm going to do. I'm going to let you hold that objection, and I'm not going to rule on it because I'm going to let her go for a minute. But unless we get to the meat, I will look at you and say object again. We -- relevance is important and I know you're laying some background. I'll let you lay it for a little while, but let's get to the point pretty quickly.

MS. MALIN: Absolutely.

THE COURT: Of interest to me was the fact that there were two other children. Okay.

THE WITNESS: You had asked, it was my daughter Melissa, the same -- same thing, hyphenated Hey-Sekul, and then Ms. Fraleigh's two twin daughters, Corey Fraleigh and Whitney Fraleigh.

BY MS. MALIN:

Q When you guys moved in together was there any discussion or agreement between both of you and Ms. Fraleigh as to how the expenses of the household would be handled?

A That was some time ago. I don't recall.

Q Was there any discussion as to how incomes would come into the household and how they would be used for household expenses?

A I don't recall if there was an actual discussion. I mean, we had bills to pay and we paid them.

Q So would it be fair to state that the income from both you and Ms. Fraleigh came into the household and that income was

used to pay for the bills of yourselves and the family?
A I -- I guess, yeah, it came into the household. Yeah.
Q Okay. And you were employed at the time?
A Yes, ma'am.
Q And where were you employed, sir?
A City of Poughkeepsie Fire Department.
Q Any other employment?
A I did the occasional job through the fire department with various venues, but most of it was paid through the fire department itself that I recall.
Q Okay. Was Ms. Fraleigh employed at that time, sir?
A Yes.
Q And do you know where she was employed at the time?
A The Postal Service.
THE COURT: I'm going to renew Mr. Bauer's objection.
MR. BAUER: I object, Your Honor. This is --
THE COURT: Can we move along until 2010? What date was the filing of this petition?
MS. MALIN: Your Honor, it was April 30th, 2010. The only thing --
THE COURT: Okay. So let's move to the end of '09. So tell me what other one thing you want to know here.
MS. MALIN: Sure. Basically one of the defenses that the debtor has proposed here is that the two of them, Mr. Sekul and she, lived together in their home and she was merely a

renter. And that's what her testimony is going to be today is that she was merely a renter and that there was no sharing of expenses, sharing of assets, sharing of anything.

And what I'm trying to establish through this witness, Your Honor, is that that was not the case. Instead they moved in together in 2006. They were together in 2007, 2008, 2009, 2010 with the same agreement.

THE COURT: Okay. Ask those quick questions --

MS. MALIN: Sure.

THE COURT: -- and then we'll get to the one before it. I've already ruled though they were an economic unit. That is a ruling of this Court, so I don't know what you're trying to get to here. I have ruled this an economic unit.

MS. MALIN: Your Honor, and I'm sorry, I didn't realize that was the ruling so that's my mistake and I'll --

THE COURT: It was a ruling. I ruled it a long time ago.

MS. MALIN: I believed it too.

MR. BAUER: Your Honor, I have to object again because that -- not only was that the ruling, but Your Honor made a statement that the only income we were going to look at is monies used, contributed to the debtor and her dependents --

THE COURT: That's the only issue we have.

MS. MALIN: Okay.

MR. BAUER: And plaintiff is trying to bring in --

MS. MALIN: No, I'll go on.

THE COURT: Well, actually, but double-edged sword here. And suddenly instead of four people in a household we've got six, so my question is did your children live with you when you -- six months before this petition was filed?

THE WITNESS: I did not have primary residential custody. And the petition was filed when, April 30th, '10?

THE COURT: April something.

MR. BAUER: April 30th, Your Honor.

THE WITNESS: I'm pretty sure by that point they were living solely with their mother. Their mother had a lot more liberties about smoking weed and typical teenage behavior that I didn't tolerate, so they didn't -- they didn't spend any time with me.

THE COURT: Immaterial. Don't --

THE WITNESS: And still don't.

THE COURT: Don't, don't, don't.

THE WITNESS: Yeah.

THE COURT: All right.

THE WITNESS: Yeah.

THE COURT: I don't need to know all that. I just need to know if they lived there.

THE WITNESS: No. I believe back to that date no, Your Honor.

THE COURT: Okay. Go ahead.

MS. MALIN: Okay. Your Honor, based upon the ruling of the Court that they were an established economic unit, I will move forward to the 2010 --

THE COURT: Okay. And the issue --

MS. MALIN: -- and not ask regarding 2007, '08 and '09.

THE COURT: And Mr. Bauer is right, the issue is contribution.

MS. MALIN: Yeah, I get it.

THE COURT: That's what we've got. Okay.

MS. MALIN: I get it. Just, you know, the arguments that were proposed in the joint statement made me believe that they were taking a different turn on the matter. Okay.

THE COURT: It's not whatever you -- what you all are doing. It's what I've already ruled, and you all need to just look at what I've ruled. This trial is on a very narrow issue.

MS. MALIN: Narrow issue. Thank you.

BY MS. MALIN:

Q Bringing you to October 2009 which is approximately six months to the April 30th date of the filing, as you understand now because the judge has explained it, we're looking at the period of October 2009 to April 30th, 2010.

A Okay.

Q Okay. So if I just refer to 2010, or 2009 --

A Include that in.

Q -- that is what I'm including in the period so that we understand each other.
A Very well.
Q So in October 2009 through April 30th, 2010, did Ms. Fraleigh reside in your household at 30 Battenfeld?
A Yes, she did.
Q And who did she live with in the household with you?
A At that point it was her twin daughters, Corey and Whitney Fraleigh.
Q Okay.
A The exact dates of my kids I don't recall, but it was around that time my kids stopped spending time at the house.
Q Okay.
A Uh-huh.
Q Okay. I'm going to show you what I've marked as Exhibit 2.

THE COURT: Just put it on there --

MS. MALIN: Just put it on the screen?

THE COURT: -- and you'll see it right there on the screen. We'll all see it on the screen.

THE WITNESS: Okay.

THE COURT: It's a little difficult to read though.

THE WITNESS: It's a little fuzzy but I can catch it.

THE COURT: You can see it? Okay.

THE WITNESS: Most of it. Some of the figures are --

THE COURT: This is pretty --

MS. MALIN: This is a hard -- this is the only copy that Mr. Sekul provided for us. Unfortunately, it's the only copy I have. I'm sorry. If you'd like, Your Honor, if I brought it to him to see it I think he might be able to see it better. Basically it's just to establish his pay.

THE COURT: If you will -- okay. If you will just take a pen and point to where you're doing it, and then I think he can probably see it as clearly as I can. Usually this is clearer than that.

THE WITNESS: I can actually see most of the figures.

MR. BAUER: Your Honor, I --

THE COURT: Mr. Bauer has to --

MR. BAUER: -- I would have to object as to relevance.

THE COURT: Okay.

MR. BAUER: How is this relevant to contributions to the household?

THE COURT: Okay.

MR. BAUER: Showing how it's --

THE COURT: Okay. Explain that.

MR. BAUER: -- contributing money to the household?

THE COURT: Explain that, Ms. Malin.

MS. MALIN: Certainly, Your Honor. First of all, I would think in order to establish the contribution of Mr. Sekul to the household I would have to demonstrate that he in fact had income. We have already agreed that this is evidence and this was an admissible exhibit from our exhibit list in our joint trial statement filed with the Court. But I mean if I can't prove he has income, I can't prove the next step which some of that -- that income was brought into the house or it wasn't brought into the house.

THE COURT: Mr. Bauer?

MR. BAUER: Proving the income is irrelevant to the contributions made to the debtor. I don't know how it would be relevant.

MS. MALIN: Your Honor --

MR. BAUER: He may have all the income in the world and two million dollars coming in, but that doesn't prove or show any contributions to the support of the debtor.

MS. MALIN: Your Honor, if I might, very simplistic.

THE COURT: Okay. I think Mister -- okay. Just tell me what you were thinking.

MS. MALIN: Okay. There is -- what is very important here is what the income was going into the household because that is an issue.

THE COURT: Not amount, not the amount.

MS. MALIN: The amount of the --

THE COURT: Mr. Bauer's objection is correct in that we don't need exact income. All we need is the fact that he had income.

MS. MALIN: But, Your Honor, if you might, that belies your economic unit standard because if they are in fact an economic unit standard, there's two ways we're looking at this. If they're an economic unit standard, the economic standard says we include his income.

THE COURT: Ms. Malin, you missed what the point of today is -- contributions to her. It doesn't -- Mr. Bauer is correct. It can be two million dollars, it can be ten million dollars, but what he gave her is what the economic unit is. It was an economic unit. I've prove -- I've said that, but how much did he give her?

MS. MALIN: I don't think it's her exactly. It's the household expenses that they shared together.

THE COURT: Okay. I won't argue with you. I am going to sustain Mr. Bauer's objection.

MS. MALIN: That's fine.

THE COURT: But Mr. Bauer will concede that -- and I'm going to get the name wrong -- Mr. Sekul had income. Now then what went to this debtor in that six-month period? What contributions in support of her debtor and dependents, that's what we've been concerned with from the very beginning --

MS. MALIN: All right.

THE COURT: -- from the minute of summary judgment.

MS. MALIN: Okay. Then just so I can get it clear for my mind, Your Honor.

THE COURT: Okay.

MS. MALIN: I'm assuming that all the exhibits that we submitted with the summary judgment motion are part of this record as a whole.

THE COURT: Well, the summary judgment is the end of that.

MS. MALIN: Right. I know what you're saying, Your Honor.

THE COURT: The summary judgment, if you read that summary judgment --

MS. MALIN: I did.

THE COURT: -- I was very clear. Summary judgment was had on every single thing except contributions of this witness to the debtor. We don't need his income. We need what was the contribution. We understand he has an income.

MS. MALIN: All right. Fine, Your Honor. So back in --

THE COURT: Yeah, okay. All right.

BY MS. MALIN:

Q Back in 2010, October 2009 --

A I understand it fully, yeah.

Q Okay. When the four of you -- that would be Ms. Fraleigh, yourself, and --

A The twins.

Q -- Corey and --

A The twins, Corey and Whitney.

Q The twins, okay.

THE COURT: The twins.

THE WITNESS: The twins.

THE COURT: An easy -- let's everybody, shorthand, it's the twins.

MS. MALIN: The twins.

BY MS. MALIN:

Q Do you remember how much money you would have contributed to the household expenses at that time?

MR. BAUER: Objection. Calls for speculation and assumes something that's not in evidence.

THE COURT: Overruled. He can answer that question.

MS. MALIN: Thank you, Your Honor.

THE WITNESS: As far as the -- I don't -- I don't remember the exact dollar figure, but as far as the mortgage statement and payment that came due every month, I paid half of that.

BY MS. MALIN:

Q And how much was that mortgage?

A I just told you I don't -- I don't -- honestly I don't recall back to that date because it had changed.

THE COURT: But you paid half the mortgage?

THE WITNESS: Yeah. I could tell you approximately but --

THE COURT: Okay.

THE WITNESS: -- I don't -- I don't know the number.

THE COURT: Give us an approximation. I'd like to know.

THE WITNESS: And this was '09/'10, probably like $1,700 so half of that.

THE COURT: Okay.

THE WITNESS: Yeah, give or take.

BY MS. MALIN:

Q And who paid the other half, sir?

A Ms. Fraleigh wrote me a check every month for approximately -- again I don't remember the number, but about half that money, like 850, something like that.

Q And how about the expenses of food in the household, who would pay for the food?

MR. BAUER: Again, Your Honor, objection. Assumes facts not in evidence and speculation.

MS. MALIN: All right.

THE COURT: Mr. Bauer, I'm going to overrule your objection. I'm going to let come in what he said he did during this period of time to support this economic unit. Continue.

MS. MALIN: I can lay a better foundation.

THE COURT: Household expenses is relevant.

THE WITNESS: Repeat the question.

MS. MALIN: Certainly, sir.

THE COURT: Food, who paid for the food?

THE WITNESS: I do recall that Ms. Fraleigh was bigger on shopping than I was, and she knew what the larger majority of the hungry mouths in the house wanted so most of the time she did it. I did it occasionally but most of the time she did it.

BY MS. MALIN:

Q Well, I know that she may have gone shopping, but who paid for it?

A Her with her checkbook when she was at the -- checkbook, credit cards, whatever it was, at the store. She didn't necessarily say, hey, I'm going to get groceries, give me money. Most of it --

Q How much would you have contributed though? Do you have any recollection?

A No.

Q But you know that you did in fact contribute?

MR. BAUER: Asked and answered, Your Honor.

THE COURT: Overruled. Sit down.

MR. BAUER: The witness doesn't remember.

THE WITNESS: Yeah, I mean --

THE COURT: That's not what he said.

THE WITNESS: -- I don't know figures. I don't know numbers, but I do remember buying occasional groceries and I know I ate them.

BY MS. MALIN:

Q Did you have electric service to the house?
A Yes.
Q Can you tell me who the electric service was provided by?
A I'm pretty sure that was in my name.
Q So would you have paid that bill, sir?
A Yeah. I'm pretty sure I paid the electric bill most of the time.
Q Do you know about how much that was, sir?
A Offhand, no. I mean, I could --
Q What is it now?
A Now it's probably -- I'm using a lot less electricity now but like 150 a month maybe, 300.
THE COURT: Is yours a month or every two months?
THE WITNESS: Every two months. It's like $300 --
THE COURT: Okay.
THE WITNESS: -- a pay period but it's --
THE COURT: Right.
THE WITNESS: -- about 150 a month.
BY MS. MALIN:
Q But you have no recollection at all what it would have been when the family was together?
A Offhand not really, no.
Q So you were together since 2006?
A No.
Q '07?

A No.
Q '08, '09?
A No, I wasn't together --
Q And you have no idea --
A -- since 2006.
Q Were you together in 2009?
A Yes.
Q Do you know what you paid then?
A Honestly I don't remember. It wasn't a whole lot more than that. It was around that figure, maybe $200 a month. I don't -- I honestly don't recall.
Q Was there cable service provided to the home?
A No.
Q There was no cable service?
A No.
Q Was there any type of service for the TV?
A Yes.
Q Okay. And what was that?
A Satellite TV.
Q Did that bill -- was that bill in your name?
A No.
Q Whose name was it in?
A I believe that was in Ms. Fraleigh's name.
Q Do you have any idea how much that was?
A An exact figure, no, but I'm guessing from what it is now

it was probably like 150, 175 a month.
Q Did you have an internet connection, sir, for computers?
A I don't remember at that time if we did because I had shut it off for a while. I don't remember during that period. The internet usually ran around $100 a month.
Q Whose name was that bill in?
A That one I don't recall exactly. I think that was my name but I'm not a hundred percent sure because I had shut it off for a while.
Q You don't know when you shut it off?
A No. It was off, it was turned on again, but I don't recall whose name it was in continuously.
Q Did you have garbage collection, sir?
A Yes.
Q And I assume you had to pay for that service, correct?
A No.
Q The garbage collection came what, free? You just got free garbage collection?
A No, I -- I didn't pay for it. That was in Ms. Fraleigh's name.
Q And remember how much it was, sir?
A Again, taking a guess --
THE COURT: Please don't guess.
THE WITNESS: Okay.
THE COURT: I don't know is a good answer.

MR. BAUER: Objection. Calls for speculation and assumes facts not in evidence.

THE WITNESS: Yeah, I don't -- I don't know the exact number. I can give you --

THE COURT: Mr. Bauer, I took care of it.

MR. BAUER: Thank you, Your Honor.

THE COURT: I overrule your objection, but I don't know is a legitimate answer.

THE WITNESS: Okay. I wanted to cooperate with the Court then --

THE COURT: And cooperating is simply I don't know.

THE WITNESS: Sure. Then no, I don't know.

BY MS. MALIN:

Q Could you estimate what the garbage collection was based upon your -- now what your bill is?

A Well, I don't have garbage service now but --

Q Okay.

A -- it was -- I think it was around $35 a month, $40 a month.

THE COURT: I don't know is sufficient. You don't have to estimate.

THE WITNESS: I'm sorry, she asked me to estimate. I'm sorry.

THE COURT: If she doesn't -- if you don't know it, say I don't know.

MR. BAUER: Objection. Asked and answered.

THE WITNESS: Okay.

MS. MALIN: Your Honor, just for the record, I would like to just respond to that, and that is that I think that it's fully -- we're fully capable and it certainly has evidentiary value as to what his estimate is, as well. I have the right to ask the question.

THE COURT: If he doesn't know, though, I don't want him estimating. If he --

MS. MALIN: I just want it made for the record that I can ask him his estimate, if he can estimate the number, that he could estimate the number, that's all.

THE COURT: That's correct, but I don't know is also legitimate for estimation.

THE WITNESS: Okay.

MS. MALIN: I understand that.

BY MS. MALIN:

Q Are the real property taxes covered by the mortgage?

A That was rolled into the mortgage amount.

Q That would be both school and town, correct?

A School, town and insurance.

Q I'm sorry?

A And homeowner's insurance.

Q Homeowner's insurance?

A It was all rolled in. It was escrowed.

Q Were there -- you told us that -- and just to clarify in my mind, 2000 -- when was the fire? I'm sorry.
A September 1st, 2006.
Q 2006?
A Uh-huh.
Q I just need to get a frame of reference on the timeline.
A Uh-huh.
Q So as of October 2009 through the filing period which was April 30th --
A Uh-huh.
Q -- 2010, was the house -- all the furnishings been replaced in the house that you had lost in the fire?

MR. BAUER: Objection, Your Honor. Relevance --

MS. MALIN: Just asking if he could --

MR. BAUER: -- to contributions to household income?

THE COURT: Let him finish his statement, and now you can respond.

MS. MALIN: Sure. I'm just asking him to see if whether or not maybe there were furnishings that were purchased for the home, maybe for Ms. Fraleigh as well as her children, you know, just things that are contributing to their health and welfare, that's all.

THE COURT: Yeah, okay.

MR. BAUER: I don't --

MS. MALIN: I mean, if he contributed to buying them

things, buying them clothing, I mean those are all contributions.
THE COURT: But this is six months prior, right?
MS. MALIN: Right.
THE COURT: Only six months prior?
MS. MALIN: That's what I asked him, October 2009 to April --
THE COURT: Having nothing to do with the fire.
THE WITNESS: Okay.
THE COURT: I will overrule your objections for the six months prior having nothing to do with the fire.
THE WITNESS: By that point I had replaced --
THE COURT: That's not the question.
MR. BAUER: Objection.
THE WITNESS: Okay.
THE COURT: Okay. You need to answer the question.
THE WITNESS: Okay.
THE COURT: The question is six -- Ms. Malin, rephrase your question because I have sustained the objection. And I think I said overruled, but have sustained the objection on everything except the six months. So the question is in that six-month period, did you give any contributions to household --
MS. MALIN: Furnishings.
THE COURT: -- furnishings?

THE WITNESS: During that period, no.
BY MS. MALIN:
Q How about clothing for someone other than yourself in the household?
A No.
Q Did anyone in the household contribute to any personal furnishings bought for you just in that period?
A No.
Q How about for clothing in that period?
A No.
Q Do you have any idea what the grocery bill was for the household in that period?
A I don't know.
Q Was -- in that period, just strictly that period --
A Uh-huh.
Q -- unless I direct you from -- into a different period.
A Okay.
Q During that period of time, were there any vehicle payments being made by anyone in the household for --
MR. BAUER: Objection, Your Honor. I don't know which vehicle the plaintiff is referring to. Is it Mr. Sekul's vehicle? Is it the debtor's vehicle?
THE COURT: Okay. Mr. Bauer, a vehicle. I'm going to overrule your objection. The question was a vehicle. We're on direct here. We're not on cross. She can't explain the

vehicle. She's got to ask direct questions.

Did you make a contribution to any vehicle?

THE WITNESS: I think my vehicle payment was complete so no.

THE COURT: Did you make a contribution to Ms. Fraleigh's vehicle during that period?

THE WITNESS: She didn't have a vehicle payment.

BY MS. MALIN:

Q Were there any payments on -- any installment payments that you were responsible for with regard to any of the furnishings in the home at that time?

A I don't think so at that time.

Q As far as your monthly payments go, your personal in that time, were there any other installment agreements that you were paying for?

A Yeah.

MR. BAUER: Objection, Your Honor. Relevance as to contributions to the household, I don't know. This might --

MS. MALIN: I will get to it once -- again, I'm on direct.

THE COURT: I was going to say this is direct. It's a foundation. I'm going to -- I will let you renew your objection. Right now I'm going to overrule it. Continue.

MS. MALIN: So say it again?

THE COURT: Yes.

MS. MALIN: Do you want me to ask the question again?

BY MS. MALIN:

Q Were there any other installment agreements that you were paying during that period of time?

A Yes.

Q Could you tell the Court what installment agreements you were paying?

A I paid an installment loan on my 2006 Bayliner boat.

Q And how much was that on a monthly basis, sir?

A Four hundred dollars and seventy-seven cents.

Q Did Ms. Fraleigh contribute to that expense?

A No.

MS. MALIN: Your Honor, again I'd like to ask him what his income was coming into the home only to establish the fact that there was two people with income. He's saying that the only thing he's paying for is his Bayliner boat and an electric bill and he has all this other income.

THE COURT: And the mortgage. And the mortgage.

MS. MALIN: Half, and he has all this other income and I need to know where that went. I need to know what was going on with that income. That goes directly to the credibility of the witness, directly to the credibility -- the value of what was coming into this house.

THE COURT: Thank you for asking the question.

Mr. Bauer?

MR. BAUER: Objection, Your Honor. The relevance of this, it doesn't matter where the money went. If he wasn't contributing it to the household --

THE COURT: That's correct.

MR. BAUER: -- he wasn't contributing it to the household.

MS. MALIN: That may be --

THE COURT: I will sustain the objection. That is correct.

MR. BAUER: Thank you, Your Honor.

THE COURT: It doesn't make any difference where the money went. He's not the one in bankruptcy. He's not a married partner. All we have to know is what he gave to her. Again it goes back to -- and I agree with this -- it can be -- he can have ten million dollars and she can live in the household, but what did he give her? She could still be poor in the household.

MS. MALIN: I understand that, Your Honor. However, I think you're really tying our hands on the grounds that if I just make a record, Your Honor, this could --

THE COURT: Okay. Go ahead, make your record.

MS. MALIN: I mean, this could go to appeal.

THE COURT: Right.

MS. MALIN: I need to make a record.

THE COURT: Make your record.

MS. MALIN: Okay. There is a certain amount of income coming into the house. I just need to hear how much income so you can look to the credibility of the witnesses as to what was being paid by whom. Certainly they can clarify, hey, I had 5,000 coming in. I was contributing a thousand to the household.

I have a right to clarify that issue for the Court, Your Honor. That's directly related to what's going on. If this man is making 100,000 and she's making 30,000 and she's paying all the expenses that go beyond what her income can afford, there's some credibility issue here.

MR. BAUER: Your Honor, I think --

THE COURT: We're in bankruptcy because of that. Mr. Bauer, I've heard you. I will sustain your objection. It does not -- it is not his income. It's what went to contribute to the household. I will judge credibility. That is my issue. I have to do that.

MS. MALIN: I don't know how you can without the complete facts.

THE COURT: That -- trust me. I don't know how else to say. I listen to credibility. I hear what's being said. Ms. Malin, Ms. Fraleigh had 115,000 in unsecured debt. Where do you think that money went? Right. Don't point your finger at me.

MS. MALIN: I'm sorry, but I could tell you that once that $115,000 went away, there is a base of money that was being used for the everyday living expenses just like every debtor in the United States of America that goes way beyond --

THE COURT: You may be seated.

MS. MALIN: -- that which is being paid out.

MR. BAUER: Objection, Your Honor.

THE COURT: You may be seated.

MR. BAUER: She's talking post-petition.

THE COURT: Exactly. Exactly. We're talking post-petition. We're not talking pre-petition.

MS. MALIN: That's fine. I made my record.

THE COURT: Go ahead with your questions.

BY MS. MALIN:

Q During that period of time, sir, where did your children attend school?

A Red Hook Central High School.

Q Where did the mother of your children live?

A In the Red Hook school district.

Q Do you have the address?

MR. BAUER: Objection, Your Honor. Relevance?

THE COURT: I'm going to say you're going to have to tell me what the -- I agree with Mr. Bauer.

MS. MALIN: The relevance --

THE COURT: What's the relevance of this?

MS. MALIN: The relevance is that I believe that his

-- the mother of his children was living outside of that county and his children were attending that school which would seem to me to indicate that maybe they were in fact living with him at that time. If they weren't living with him that's fine, but they could not go to Red Hook schools if she lived in Ulster County.

MR. BAUER: Objection. Relevance and asked and answered about the kids living with Mr. Sekul.

THE COURT: I still don't understand the relevance here, Ms. Malin.

MS. MALIN: That's fine. You've ruled.

THE COURT: I will sustain the objection.

MS. MALIN: If I might, Your Honor, I'd like to show -- I'm going to say your name wrong, but it's Mr. Sekul -- what's been marked as Exhibit 17.

BY MS. MALIN:

Q Do you know what this document is, sir?

A No.

Q Have you ever seen this document before?

A No.

Q I'm going to direct your attention down to -- I'm going to point to it. See where it says assets?

A Yes.

Q You see where it says --

MR. BAUER: Objection. This is --

THE COURT: Thank you. Thank you. I'm ready.

MR. BAUER: This is not relevant.

THE COURT: This is post-petition.

MR. BAUER: He didn't prepare this and this is post-petition as well, Your Honor.

MS. MALIN: It's evidence of what was occurring prior to the filing. You don't --

THE COURT: How so? This is a post-petition document --

MS. MALIN: Yeah, but it --

THE COURT: -- not signed by this witness.

MS. MALIN: Certainly not but he still can answer questions about it. What this goes to, Your Honor, if I --

MR. BAUER: Objection, Your Honor.

THE COURT: She can explain, Mr. Bauer.

MR. BAUER: All right.

THE COURT: If you will just let her explain before you --

MR. BAUER: Well, I'm --

THE COURT: -- keep standing up. Just stay seated. I said get the drama out of this thing. I've got an objection on the table. I've heard your objection. She gets to explain before I rule.

Now then, let's hear you.

MS. MALIN: Thank you, Your Honor. Yes.

THE COURT: Flip that off right quick. Her Social Security number is on there. Take it off the thing.

MS. MALIN: I'm sorry. I don't see it but I will mark it off so -- I don't see her Social Security number.

THE COURT: Okay. Now tell me why a post-petition --

MS. MALIN: I think it's her telephone number, not her Social Security number.

THE COURT: Okay.

MS. MALIN: Just so you know.

THE COURT: Okay.

MS. MALIN: I don't --

THE COURT: Well, here comes Frances.

MS. MALIN: If you want to show me --

THE COURT: She'll take care of it.

MS. MALIN: That's fine. Okay. Here's what --

THE COURT: So tell me what the relevance is.

MS. MALIN: The relevance of this is we've now given to the Court -- I'm sorry. Thank you.

THE COURT: So what we have --

MS. MALIN: I'm just marking out, Your Honor, for the record --

THE COURT: Okay.

MS. MALIN: -- her Social Security number so that it's not again exposed on the thing.

THE COURT: Thank you.

MS. MALIN: So basically what we have here, Your Honor, is as of 2006 the parties lived together at least off and on. There was support -- they were -- he testified they were sharing expenses in 2006, 2007, 2008 and 2010.

THE COURT: We got it all down to the six months prior to.

MS. MALIN: Okay. Okay. So this is just evidence. What happened is this was a child support matter that had commenced prior to the filing of the petition and had been pending in the matrimonial court for some time. This document goes forth to the issue of what was occurring at the time in the household of the parties that they're seeking to do the support order with regard to at the time the action was commenced. So although this is dated after the filing of the petition, it goes to what this -- what a person was continuously to contribute --

THE COURT: Let me see the document. You've seen it, Mr. Bauer?

MR. BAUER: Yes, Your Honor.

THE COURT: Okay.

MR. BAUER: It's clearly post-petition and irrelevant to our proceeding today.

THE COURT: I just want to see.

MS. MALIN: Clearly it goes to what would have happened over time. I can't suspect that this Court would believe that all of a sudden post-petition he's putting in $900 to the home on a weekly basis or what it says there.

THE COURT: Actually, I can because they finally had credit counseling and they finally decided to do something normal.

MS. MALIN: Are we not supposing that into the record? He's not said that (indiscernible).

THE COURT: I'm not either. I'm not either, but I'm just telling you that what you say has another side that's just as good. I cannot admit that.

MS. MALIN: But that could be explored on cross.

THE COURT: I cannot admit that. That is a post-petition document.

MR. BAUER: Thank you, Your Honor.

MS. MALIN: And the grounds for not -- because --

THE COURT: It is a post-petition document that does not in any way say that it went back to the period of time of filing this bankruptcy.

MS. MALIN: Well, shouldn't the witness testify as to that though, Your Honor?

THE COURT: The witness has testified that he had nothing to do with this document.

MS. MALIN: Yes, he has, but I haven't had the chance to ask him --

THE COURT: It's a --

MS. MALIN: -- whether or not it relates -- the amount on this relates back to what he was giving -- gives him a recollection of what was occurring prior to.

MR. BAUER: It would just be hearsay, Your Honor.

MS. MALIN: How is it hearsay? He was living there.

THE COURT: It's not hearsay. He's living there. It's a rule --

MS. MALIN: I mean, you're telling --

THE COURT: The ruling is not hearsay. The ruling is relevancy, Mr. Bauer. If you're going to object, you're going to object on relevancy grounds.

MR. BAUER: Right.

THE COURT: Thank you.

MR. BAUER: Thank you. Relevancy.

THE COURT: I hear your objection on relevancy. I will sustain the objection on relevancy because it is an August document after a bankruptcy was filed in April.

MR. BAUER: Thank you, Your Honor. Your Honor, again I'd have to object for Ms. Hartley --

THE COURT: Sit down. I have already ruled on that, Mr. Bauer. I don't need to be reminded. If you don't like my ruling on it, you can take me up.

Yes, Ms. Malin?

MS. MALIN: Your --

THE COURT: Yes?

MS. MALIN: Mister --
THE COURT: Oh, I'm sorry.
MS. MALIN: That's okay.
THE COURT: I thought you were still talking to me.
MS. MALIN: I keep trying to struggle with pronouncing his name.
THE WITNESS: If it would please the Court, I'm fine with Chris. I really am.
THE COURT: You can't.
THE WITNESS: Okay.
MS. MALIN: No.
THE WITNESS: All right.
THE COURT: Even though we slaughter your last name, and me included --
THE WITNESS: Slaughter away.
THE COURT: -- we can't use the first name. Thank you.
THE WITNESS: Slaughter --
THE COURT: Just slaughter away.
THE WITNESS: Slaughter away.
THE COURT: Just be comfortable; call whatever you can.
MS. MALIN: Okay.
THE COURT: We're all now forgiven about that we screw up last names.

THE WITNESS: Slaughter away.

THE COURT: You should be here on a Tuesday when I have to call all the names, and you don't know how long it took me to pronounce Fraleigh.

THE WITNESS: I'm terrified to mispronounce your name, Your Honor.

MS. MALIN: Luckily Morris is an easy one.

THE WITNESS: It's an easy one. I looked at it and I practiced it.

THE COURT: Okay.

BY MS. MALIN:

Q Would it help to refresh your recollection as to how much you were contributing to the household if I told you that Ms. Fraleigh had commented that $586 a week was coming in from your salary?

A Would it do what? I'm sorry.

Q Would it help to refresh your recollection as to what you were contributing during the period of time?

A Not really.

Q Okay. In 2010 or the period of time --

A I understand.

Q -- between October 2009 and April 2010, was there any discussion between you and Ms. Fraleigh with regard to what the household expenses were?

A I don't recall if there was a specific conversation, no.

Q Was there ever a discussion between you and Ms. Fraleigh about the fact that Ms. Fraleigh had to pay credit card debt that was making it difficult for her to contribute monies to the home?
A I don't recall if there was a specific conversation, no.
Q Do you know whether or not Ms. Fraleigh was paying the debts in October of 2009 to her credit card companies as you've heard here today, about $115,000 worth?
MR. BAUER: Objection. Relevance to the contributions to the household.
THE COURT: I will overrule that objection. That is relevant.
THE WITNESS: I would just be speculating. I don't know what bills exactly.
THE COURT: Don't speculate.
THE WITNESS: I don't know what bills she was actually paying or not paying.
BY MS. MALIN:
Q So you never had a discussion with Ms. Fraleigh about her bill situation?
A No. I just said I -- I don't recall any specific conversation about it.
Q Do you recall having a conversation?
MR. BAUER: Your Honor, asked and answered. Objection.

MS. MALIN: He's saying a specific conversation.

MR. BAUER: Calls for speculation.

MS. MALIN: I just want to know if they spoke about it.

THE COURT: Overruled, Mr. Bauer.

MR. BAUER: Thank you.

THE COURT: That was a legitimate question.

THE WITNESS: I know in the beginning of 2010 she was starting to, but exactly what month I don't know, but somewhere around the spring of 2010 I know she was starting to have trouble paying bills.

BY MS. MALIN:

Q And when you say paying bills, you mean her credit card bills?

A That was included, yeah.

Q How about the food bill in the house?

A I don't recall specifics, just that she was having trouble paying bills.

Q Do you recall being able to eat at that time since she was doing all the food shopping as you told us?

A I was a lot skinnier then. I'm pretty fat now I've got to tell you.

Q Okay. But the question is were you eating?

THE COURT: Just answer the question.

THE WITNESS: I -- I believe I was.

BY MS. MALIN:
Q Okay. Was the garbage being collected?
A I don't know if we had turned it off at that point.
Q Do you know whether or not you had the satellite TV going?
A I believe it was.
Q We know you had the electric going because you were paying for it, correct?
A Right.
Q In the period of time that we've been speaking about, did you have any discussions with Ms. Fraleigh regarding the filing of a bankruptcy petition?
A She said she was contemplating doing it during -- during that period. Exactly when I don't know.
Q Okay. Do you remember -- do you recall what the conversation between you was with regard to that?
A She --
MR. BAUER: Objection. Asked and answered. He doesn't remember.
THE COURT: Be seated, Mr. Bauer. She can follow up with a question.
THE WITNESS: Just that she was --
THE COURT: Excuse me.
THE WITNESS: I'm sorry.
THE COURT: Overrule your objection.
MS. MALIN: Thank you.

THE WITNESS: Just that she was thinking about filing bankruptcy.

BY MS. MALIN:

Q Do you know what --

THE COURT: Excuse me just a second. Will you let me caution you something. There's a microphone in front of you. We need you speaking clearly into that.

THE WITNESS: Okay.

THE COURT: Thank you.

THE WITNESS: Just that she was thinking of filing bankruptcy.

BY MS. MALIN:

Q Do you know if she did any research before she filed the bankruptcy petition regarding filing --

MR. BAUER: Objection. Calls for speculation.

MS. MALIN: He's living in the household with her. He's sitting -- he sees her every day.

MR. BAUER: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: I don't know what she did as far as seeking information prior to filing.

BY MS. MALIN:

Q Did you seek any information prior to her filing, sir, regarding the --

A Regarding her bankruptcy?

Q Regarding the filing of a bankruptcy.

MR. BAUER: Objection, Your Honor. Relevance? How is his filing bankruptcy relevant to --

MS. MALIN: Not him filing bankruptcy, her filing.

THE COURT: Overruled. You don't have to object to every question. There can be follow-up questions, and these are follow-up questions.

MR. BAUER: I just don't see the relevance, Your Honor.

THE COURT: It is relevant.

MR. BAUER: I didn't --

THE COURT: It is relevant to the household, but it is contribution. Ms. Malin, let's get on track. It's contribution.

MS. MALIN: It's also, Your Honor, as you may recall it's whether or not the debtor sought to commit fraud when she filed her schedules and did not include his contribution.

THE COURT: We're past that. We've got contribution only. Okay.

MS. MALIN: But we have to look to the actual standard on the fraud issue and whether or not the two of them --

THE COURT: I've heard you. I overruled the objection.

MS. MALIN: Thank you.

THE COURT: Ask the question and let's move it along.

BY MS. MALIN:

Q Did you do any research regarding the filing of a bankruptcy, what that may entail?

A No, absolutely not.

Q Did you go to the attorney's office with Ms. Fraleigh when she filed the petition or when she sought her initial consultation regarding filing bankruptcy?

A I don't recall if it was the initial consultation, but I did go to the bankruptcy attorney's office.

Q About how many times would you say you had gone there on that regarding the matter of filing Ms. Fraleigh's bankruptcy petition?

A I think just the once.

Q And did you meet with the attorney?

A Yes.

Q Can you tell me what the discussions -- what discussions occurred between yourself and the attorney and Ms. Fraleigh that day?

A I don't recall exactly what she had discussed with him. Between he and I it was just who I was, what my position was, and other than that it was small talk.

Q When -- what do you mean who you were?

A Who I was in relationship to her, why I was sitting in the office.

Q So you were just sitting in the office? You didn't go in

in the meeting with Ms. Fraleigh and Mr. Juran?
A No, I went in -- I went in the office but I was sitting in there with her, and he had a concern of why I was in the office because I wasn't the one filing.
Q And did he ask you to leave?
A No, he asked who I was and I explained who I was.
Q And who did you explain you were, sir?
A I told him that I was Ms. Fraleigh's boyfriend and we lived together.
Q Did he ask you any other questions, sir?
A I don't recall if he asked specific questions. I mean, I told him what I did. We talked just some small talk, some weather stuff. I don't recall much more than that.
Q Did you tell him that you were contributing to the household expenses of Ms. Fraleigh?
A He was well aware of the fact that I lived in the house and I paid bills there and I had a job.
Q Did you tell him that you were contributing to the household expenses of Ms. Fraleigh at that time?
A I did tell him that I was contributing to the house. We told him exactly what I explained to you before as far as our arrangement with the mortgage and a couple other bills.
Q You mean you told him you didn't recall?
A I'm sorry?
Q You mean you told him you didn't recall what your expenses

were because that's what we discussed?
A Right. Everything that I told you I told him.
Q Okay. So did he ask you what your income was at that time?
A I don't recall.
Q Do you recall telling him even if he didn't ask?
A Again, it would be speculation so no, I don't recall.
Q Did Ms. Fraleigh tell him what your income was while you were sitting?
A Again, it was a while ago. I don't remember the exact conversation.
Q So would the answer be no?
A The answer would be no.
Q Did Ms. Fraleigh discuss with him the way you shared bills?
A I don't recall.
Q You recall you discussed it with him but you don't recall whether Ms. Fraleigh discussed it?
A Right.
Q Did she sign her petition at that time?
A Did I? Did I sign a petition?
Q Did she sign her petition at that time?
THE COURT: She. She.
THE WITNESS: Oh, I'm sorry. I didn't -- I didn't hear that. I don't remember.
BY MS. MALIN:
Q Do you remember seeing her sign any papers at that time?

A I don't recall, no.
Q No, you don't recall whether or not she did?
A No.
Q Okay. Did you review any documents with her in the office at that time with Mr. Juran?
A No.
Q Juran?
A No.
MS. MALIN: I'm not sure if I established this or not, Your Honor.
BY MS. MALIN:
Q You were employed at the time you were living together between April -- I'm sorry, October 2009 and April 2010?
MR. BAUER: Objection as to relevance. His employment --
THE COURT: I'll overrule the objection. It's just the groundwork. A good question. I need to know answer.
THE WITNESS: I've had continued employment.
BY MS. MALIN:
Q And where were you employed at that time?
A The City of Poughkeepsie Fire Department.
Q Anywhere else?
A I did some venue work for the --
MR. BAUER: Objection, Your Honor. Relevance.
THE COURT: I sustain that objection. We found out he

was employed. We found out he had income. That's sufficient.

MS. MALIN: Well, I think --

THE COURT: It's still contribution. I don't need to know how much he makes or where he's employed.

MS. MALIN: I'm not asking that. However, it goes directly to the issue of fraud at this point. Basically what happened, Your Honor, is I just want to establish what he was doing in that period of 2010 as to what income he had. We had a 2004 exam. I asked him the same question and I believe he gave me a different answer than actually occurred, and I think that goes to the overall scheme of things here as to the -- whether or not these parties have been fully truthful with Mr. Juran.

THE COURT: Mr. Bauer?

MS. MALIN: As you know, Your Honor, I basically have witnesses here.

THE COURT: I understand.

MS. MALIN: I asked Mr. Sekul --

THE WITNESS: Yes.

MS. MALIN: -- Mr. Sekul at the 2004 exam whether or not he had any other sources of income, whether or not he had a business. He answered to me no, he did not.

THE COURT: I have already ruled on this one issue before. I let you carry it to just say that he was employed. That was enough. I will now sustain this objection. It's contributions to Ms. Fraleigh.

MS. MALIN: What about the fraud issue, Your Honor? You have to let me develop the fraud issue. You're talk --

THE COURT: We're down to one issue and it's contribution. Ms. Malin, you can take me up.

MS. MALIN: I will, Your Honor. Your Honor, I will take that under advisement, but there was a -- there's a memorandum of law that we submitted on the trial standard here, and this Court pointed out very clearly there were two standards. First, did Ms. Fraleigh intentionally fail to put the contribution on the schedules and the means test?

THE COURT: You've had the --

MS. MALIN: And second --

THE COURT: You've had that testimony right now. Okay. That's the testimony.

MS. MALIN: And second --

THE COURT: I'm listening.

MS. MALIN: -- did she disclose all of the income she was supposed to? And third, whether or not there was an actual contribution. I mean, it's hand in hand.

THE COURT: But that's not his income. That has nothing to do with his income.

MS. MALIN: I'm not trying to prove his income. What I'm trying to prove is that these parties have changed their story from beginning to end.

THE COURT: That's fine.

MS. MALIN: He testified he had no additional income at the 2004 exam. I have a right to flush that out. He said he did not have a business.

THE COURT: I don't understand why --

MS. MALIN: He does have a business -- because it goes to the credibility of the witness.

THE COURT: He didn't file bankruptcy.

MS. MALIN: It doesn't matter, Your Honor. He was -- it goes to the credibility and the fraud. Did these parties scheme together or did the debtor scheme to intentionally leave off income --

THE COURT: Mr. Bauer?

MS. MALIN: -- or contribution.

MR. BAUER: Let's assume for a moment that Mr. Sekul does have other income. I still object to the relevance because he can have another ten million dollars of income that he's reporting or not reporting. If it's not contributed to the household, it's not contributed to the household.

THE COURT: I agree. I --

MS. MALIN: That goes only to the contribution issue, Your Honor, not to the fraud issue as to whether or not these parties have been truthful to this Court. It is a mockery of this Court not to be able to --

THE COURT: Ms. Malin, this witness is a witness. He is not a debtor.

MS. MALIN: He's more than a witness.

THE COURT: I don't need to know --

MS. MALIN: He's an economic unit.

THE COURT: I understand he's an economic unit. I will sustain the objection. I will not allow you to ask any more questions. I let it come in that he has income. That's sufficient. We know he's got income. That's it. He's also -- all right.

MS. MALIN: Well, that's fine, Your Honor, if I can --

THE COURT: They don't have to disclose all of his income.

MS. MALIN: No, of course they don't have to disclose all of it. But, Your Honor, there is not only one issue here. It is not just what his contribution is. The issue is did the debtor with intent to defraud this Court fail to put his contribution on the means test as she is required and on the Schedule I. Let me just --

THE COURT: But his income makes no difference to that. I will sustain that objection. I have now ruled. We've had enough.

MS. MALIN: That's fine, Your Honor, but I just want the ruling --

THE COURT: I've had enough.

MS. MALIN: -- to also be on the fraud issue so that

when -- if we do take it up to appeal I have a record.
THE COURT: Okay. Sustained. The objection is sustained as to relevance.
BY MS. MALIN:
Q Do you know Mr. Corey Madison?
THE WITNESS: Is she asking me, Your Honor?
MS. MALIN: Yes.
THE WITNESS: Yes.
THE COURT: Excuse me, who? I'm sorry?
MS. MALIN: Corey Madison.
THE COURT: Very good.
MR. BAUER: Objection as to relevance, Your Honor.
THE COURT: You don't know, Mr. Bauer, at this moment whether it's relevant or not. Let's have some follow-up questions before you pop up. You're overruled.
Ms. Malin.
BY MS. MALIN:
Q How do you know Mr. Madison?
A I went to the fire academy and I work with him at the fire department.
Q Did you ever work with him on any outside businesses?
A I mean, he's done stuff for --
MR. BAUER: Objection as to relevance, Your Honor.
THE COURT: Okay. I don't know -- what are you trying to get at here if we're talking about income?

MS. MALIN: I think that -- I'm not talking about the income but whether or not he had another source of income. I think that I need to explore it. If he would like to object to it, I think he can object to it. I need to make a record for appeal. You can rule in his favor, Your Honor, but I'm going to go through each and every question and just get the objection, and whatever the Court decides to do with it is fine.

THE COURT: I will sustain. If this is to do -- has to do with Mr. Sekul's income, I sustain the objection.

MS. MALIN: It has to do, Your Honor, with the fraud issue as to whether or not that these parties intentionally sought to keep quiet what the income and what the contribution was into the household. Okay.

THE COURT: I don't still see the relevance of his income but okay.

MS. MALIN: That's fine. Just so I can make my record.

THE COURT: Okay.

MS. MALIN: And I will make it as quickly as I can, Your Honor.

THE COURT: Okay.

BY MS. MALIN:

Q Did you ever do any work at Mr. Corey -- excuse me, Mr. Madison's home that you were paid for?

A That I was paid for, no.

THE COURT: Mr. Bauer?

MR. BAUER: Objection, Your Honor. Relevance.

THE COURT: Sustained.

MS. MALIN: And, Your Honor, just to save the Court time, it's the same fraud and not income.

THE COURT: It's the same. Okay. So we're going to go through the same questions and Mr. Bauer is going to have the same objection. Okay.

MS. MALIN: That's fine.

MR. BAUER: Do I have to object --

THE COURT: Tell us -- it's an ongoing objection.

MR. BAUER: Thank you.

THE COURT: Tell us when you're finished asking -- she's doing it for the record. Tell us when you're finished asking the question and just look at me and go from there. Okay.

MS. MALIN: Okay. Thank you.

BY MS. MALIN:

Q Can you tell the Court whether or not you know a Mr. Martin Conroy?

THE COURT: Now, you can answer that question.

THE WITNESS: I don't think I know him.

BY MS. MALIN:

Q Did you ever do any work at Mr. Conroy's property?

A I don't know because I don't --
THE COURT: The objection is sustained on that.
MS. MALIN: Okay.
BY MS. MALIN:
Q Do you know Florence Conroy?
A No, I don't think so.
Q Do you believe you ever did any work on Florence Conroy's property?
THE COURT: Don't do the follow-up question on the ones he doesn't know. Okay. That's all right.
MS. MALIN: Okay.
THE COURT: Sustained.
MS. MALIN: Thank you.
BY MS. MALIN:
Q Do you know a Mr. Harold Ehrlich?
A I don't think so.
Q Did you do any work on his property?
MR. BAUER: Objection.
THE COURT: Sustained.
BY MS. MALIN:
Q Do you know Melissa Karchmer?
A No.
Q Did you do any work on her property?
THE COURT: Sustained.
BY MS. MALIN:

Q Do you know a Mr. Raymond Rivard?
A I don't think so.
Q Did you do any work on his property?
THE COURT: Sustained.
BY MS. MALIN:
Q Do you know Ms. Susan Rivard?
A I don't think so.
Q Did you do any work on her property?
THE COURT: Sustained.
BY MS. MALIN:
Q Do you know Elizabeth Bern (phonetic)?
A I don't think so.
Q Did you ever do any work on her property?
THE COURT: Sustained.
BY MS. MALIN:
Q Do you know an Abha Swanhay (phonetic)?
A I don't think so.
THE COURT: Sustained. I'm sorry, you have to ask the question first.
BY MS. MALIN:
Q Did you do any work on his prop -- or --
THE COURT: Her property.
MS. MALIN: This person's property, yeah.
THE COURT: Sustained.
BY MS. MALIN:

Q Do you know a Mr. Charles Goldsmith?
A I don't think so.
Q Did you ever do any work on his property?
THE COURT: Sustained.
BY MS. MALIN:
Q Do you know a Margaret Goldsmith?
A I don't think so.
Q Did you ever do any work on her property?
THE COURT: Sustained.
BY MS. MALIN:
Q When you paid for the household bills that you testified you paid for, how did you pay them? Would it be by check or cash?
A I'm pretty sure it was by check, most of them.
Q Did you receive -- did you ever get paid in cash during that period for any work performed? And meaning the period October 2009 to, shoot, April 2010.
MR. BAUER: Could she just repeat the question, Your Honor?
THE COURT: Did he -- was he ever paid in cash?
MS. MALIN: During that period.
THE COURT: In any work he did.
MR. BAUER: Objection, relevance.
THE COURT: I will overrule that objection because it goes to the quality of the funds. I mean the movability.

THE WITNESS: I don't -- I don't think so.
BY MS. MALIN:
Q And would it surprise you if I were to tell you that the dep -- the 2004 examination that you appeared at my office for, you testified that you paid most of your bills in cash?
A You asked me about the household bills. Like the installment loan of the boat, a lot of times I paid that in cash.
Q The installment loan?
A The installment loan, I paid that in cash.
Q And how would you pay -- make that payment?
A Just go to the bank at the Hudson Valley Federal Credit Union where the loan was.
Q Okay. But if you were to pay for food, you would pay for that with a check?
A That I don't recall, but my mortgage I'm pretty sure I either paid it by check or over the phone directly out of my checking account. Same with the electric bill, either over the phone directly out of my checking account. Occasionally the Central Hudson guy came up to the door and knocked and said, hey, you're late on your payment. Sometimes I'd pay him by cash. Sometimes I'd give him a check.
Q Thank you. Do you know a Mr. Andrew R. Stone?
A Yeah. Yes.
Q And how do you know him, sir?

A I work with him at the fire department.
Q Thank you. He's a fireman or --
A Yes, ma'am.
Q Did he ever pay you for any -- did he ever write to you a check for any reason?
MR. BAUER: Objection, Your Honor. Relevance?
THE COURT: You're going to have to tell me what kind of check or what is -- is this income or --
MS. MALIN: It's going to the income issue, yes.
THE COURT: Very good. Sustained.
BY MS. MALIN:
Q Again for the record, Your Honor, so in the period of 2000 -- October 2009 to October -- excuse me, to April 2010, did you operate a business?
MR. BAUER: Objection. Relevance, Your Honor.
THE COURT: Sustained.
BY MS. MALIN:
Q Do you own a backhoe, sir?
MR. BAUER: Objection, Your Honor. Relevance.
THE COURT: Can you explain why that would be important to contribution?
MS. MALIN: Well, the backhoe had to be maintained, Your Honor, and it's just another expense that came to my head and I want to know who would have paid for that.
THE COURT: Okay. You can ask --

MS. MALIN: And it won't --
THE COURT: Okay. I will overrule your objection.
BY MS. MALIN:
Q Do you own a backhoe?
A Yes, I do.
Q Do you have to pay, you know, to maintain that backhoe?
A It's very random. There is maintenance but it's not scheduled or regular.
Q Okay. So you would have to pay to maintain it?
A If something breaks I have to fix it, yeah.
Q Did Ms. Fraleigh ever contribute to that expense?
THE COURT: Don't. Don't object.
BY MS. MALIN:
Q Did Ms. Fraleigh ever contribute to that expense?
A No.
Q Now, you said you had a boat.
A Uh-huh.
Q Do you keep that on the property, sir?
A Six months a year, yes, I do.
Q And the other six months of the year where do you keep that?
A A slip down at Norrie Point State Park in Staatsburgh, New York.
Q Okay. And who pays for that?
A I do.

Q When you were at the 2004 exam, I showed you a check that demonstrated that Ms. Fraleigh had made payments on that. Would she have contributed to that on a regular basis?
A No, absolutely not.
Q But she did contribute?

THE COURT: During that six-month period?

MS. MALIN: During that six-month period did she contribute?

THE COURT: During that six-month period?

THE WITNESS: That I don't recall.

THE COURT: From October until April the 30th?

THE WITNESS: I don't -- I don't recall if she made a payment on it then.

THE COURT: When do you usually put the boat in the water?

THE WITNESS: I put it in the water sometime on or about Memorial Day and I pull it out on Halloween.

MR. BAUER: Objection as to relevance and assumes facts not in evidence.

THE COURT: I am going to sustain the objection to that question.

MS. MALIN: To the last question? Okay.

THE COURT: Excuse me. I'm not going to sustain the objection. I'm going to overrule your objection. I'm sorry to do that. That's relevant. Whether or not she paid, but we know it was pulled out of the water and not during -- in the water during that period of time.

BY MS. MALIN:

Q Ms. Fraleigh have a vehicle during the period of time -- again back to October 2009 to, excuse me, April 2010, did Ms. Fraleigh have a vehicle?

A Yes.

Q I assume it was a car.

A Yes.

Q Do you remember what it was just so that we can just clarify for the record?

A It was a Honda Accord.

Q Do you know what year it was, sir, by any chance?

A No.

Q Did -- during that period, do you remember that car having to have repairs?

A I don't recall.

Q Would you ever have paid for any of the repairs to the vehicle?

A I don't think so, no.

Q Would Mrs. Fraleigh during the period -- Ms. Fraleigh, I'm sorry, would she ever ask you -- you know, have a conversation with you and ask you for money?

A I don't recall.

Q Prior to that would she have a conversation and ask you for money?

A Occasionally if she was walking out the door and didn't have time to stop at an ATM she'd ask me can I borrow a couple bucks for lunch and she'd take it off my nightstand.

Q Okay. Would she borrow money for any other reason, sir?

A I don't think so.

Q And it was a loan so you'd make sure she paid you back?

A Sometimes yes, sometimes no.

MR. BAUER: Objection. Relevance and calls for speculation.

MS. MALIN: How could he speculate about what he's doing?

THE COURT: I was going to say, I don't understand.

MR. BAUER: His answer was he's unsure. He doesn't know so I don't know how she's saying we have a loan.

MS. MALIN: Well, he says I'm unsure, I don't know, but I did give her money. I'm unsure but I don't know but she took it off my desk. I'm unsure but I don't know. I mean, he knows they've been living together for a period of like five or six years.

THE COURT: Sustain the objection.

MS. MALIN: As to that last question, Your Honor, or line? Okay.

BY MS. MALIN:

Q Can you state for the record, sir, what household bills that you were aware of that were incurred by the home in the period of October 2009 to April 30th, 2010?

THE COURT: I'm sorry, I missed that.

MS. MALIN: I'm sorry.

THE COURT: I just missed it.

MS. MALIN: I didn't want to get too close to that. I assume you can hear me.

THE COURT: I can hear, it's just -- it was just --

MS. MALIN: Yeah.

THE COURT: I got distracted for a second.

MS. MALIN: That's okay. I just wanted him to list for me the household bills that he was aware of in that period of time, what bills the household was incurring.

THE COURT: Okay.

THE WITNESS: We've mentioned the electric bill. There was a garbage pickup bill. There was a satellite TV bill. There may or may not have been a -- the internet bill. I don't recall if we had that on at that point. The mortgage which was the mortgage, taxes and insurance escrowed. There was home heating fuel. Those were the regular bills. There were some other incidental bills, I mean.

BY MS. MALIN:

Q Like?

A Cleaning out the septic tank every year. There was for snowstorms buying a shovel, buying sand, salt, things that we needed to maintain safety.

MR. BAUER: Objection, Your Honor. Are these all expenses being paid in this timeframe of six months before the petition and that's what --

MS. MALIN: That's what he said.

THE COURT: That's what he said. That was the question. He's answering the question that was asked.

MS. MALIN: Anything else?

MR. BAUER: Very good.

THE COURT: And during that period of time, those sound legitimate to me except the septic. I don't usually clean mine in the winter.

THE WITNESS: No, we -- we actually had to do it, and believe me, I know it was winter. I was out there digging it up.

THE COURT: Oh, okay.

THE WITNESS: The -- I mean, there's countless bills just like any other house. Every time a light bulb goes you've got to replace it. You break -- you break a dish. You know, dish soap for your -- for your sink, and there was -- there was an endless amount of bills. I can't commit to listing every one.

BY MS. MALIN:

Q Can you tell me whether or not there were any household repairs done during that period of time?

A During that period I don't recall, but I don't think so.
Q Okay. Now, you said there was a fuel bill. Do you remember what the fuel bill was?
A I know what it is -- what it's averaged out to over the year.
Q Could you tell me that?
A It's about $3,000 a year to heat the home.
Q Okay. And who would pay that bill, sir, during -- and we're talking during the period?
A Right.
Q Okay.
A I don't recall who paid it exactly at that point, but that was one bill that we both paid.
Q That you would share, sir?
A Share is kind of a structured term. Whoever had the money at the time would pay it when the bill came, and that's why I can't recall between April and October -- or between October and April of '09 who paid it exactly at that time, but that was very random.
Q Okay. Now, you said you cleaned the septic --
A Uh-huh.
Q -- during that period of time?
A Uh-huh, I'm pretty sure.
Q And --
A Yeah, it was -- oh, I remember it.

Q You're starting --
A Would you like me to describe it?
THE COURT: No.
MS. MALIN: Just off the record, but he's starting to really scare because I haven't cleaned my septic system back at my house.
THE COURT: I object. I don't want to hear it.
THE WITNESS: No, I -- I remember it.
THE COURT: You haven't cleaned it since you moved in your home?
THE WITNESS: Yeah, every year.
MS. MALIN: I know. Isn't that horrible?
THE WITNESS: Every year.
MS. MALIN: Okay.
THE COURT: You must have a small one.
THE WITNESS: No. I had a lot of teenage girls living in the house --
THE COURT: Oh.
THE WITNESS: -- that threw hygiene products down.
MS. MALIN: Okay.
THE WITNESS: Yeah.
THE COURT: Ouch. Okay.
THE WITNESS: Share -- share my pain?
MS. MALIN: Very happy I have two sons.
THE WITNESS: Share my pain?

BY MS. MALIN:

Q The cleaning of the septic, sir, do you remember -- I mean, did you hire a service to come in and clean it?

A I did not. Ms. Fraleigh did.

Q Okay. So Ms. Fraleigh paid for that?

A Yeah.

Q Okay.

A Absolutely.

Q Do you have any idea what that bill was?

A It was usually $300 every time it came in.

Q Okay. And why would she pay it as opposed to you paying it?

A Because I had never had a septic backup before she and her daughters started whaling feminine hygiene products down the toilet.

Q Okay.

A But then --

MS. MALIN: So see, he hasn't done it every year. It's only the women that ruined his life.

THE WITNESS: Not lately.

THE COURT: It's only when the women came in.

THE WITNESS: Uh-huh.

MS. MALIN: That's what I meant.

THE COURT: Blame it on a woman.

MS. MALIN: It's a common theme in America.

THE WITNESS: Never realized.
BY MS. MALIN:
Q You said you bought shovels, salt, sand, you know, that --
A No. No, I said those were expenses.
Q Okay.
A I didn't. Ms. --
Q You didn't purchase those?
A Ms. Fraleigh picked up new shovels, salt, sand, stuff like that.
Q And you don't have any idea how much that expense was, do you, sir?
A Throughout the winter I could say -- tell you it was probably about three -- 300 bucks or more.
Q Did anyone plow the driveway?
A That was me.
Q You plowed it yourself? You had a plow?
A Yes, I did.
Q Okay.
A Yeah. That's why I have the backhoe, too. That's what I use to plow the driveway. I use the backhoe to clean the snow.
Q Oh, okay. Well, when you're plowing the driveway do they -- was there any contribution made by Ms. Fraleigh as to the expense of the gas or oil or whatever is used to operate it?
A That's why -- that's why she picked up all the other. I drove the backhoe around and took, you know --

Q Okay.
A I took care of that and she took care of walkways and shovels.
Q Okay. How about like replacing light bulbs? You had stated that you believed that you would be replacing light bulbs like minimum maintenance.
A I don't recall replacing one light bulb while we lived together.
Q Who would normally have purchased that stuff though?
A I guess her. The lights were always on so --
Q Okay.
A It was never dark there. I don't know what to tell you. It was always very brightly lit.
Q How about the dish soap?
A Same deal.
Q I'm sorry, I didn't hear you.
A Same deal, dishes were always clean but I never bought any of that stuff that I recall.
Q Okay. And the occasional dish that broke in that time period?
A They were her dishes; break away.
Q Again how much were your real property taxes at the time?
A I don't remember if they'd gone up at that point yet or not.
THE COURT: But they were included in the mortgage.

Is that correct?

THE WITNESS: Yeah.

MS. MALIN: Yes.

THE WITNESS: They were rolled in. They were escrowed.

BY MS. MALIN:

Q I just wondered if you knew the expense.

A I mean, now they're like nine grand so maybe --

THE COURT: Relevance?

THE WITNESS: -- maybe six grand.

MR. BAUER: Objection, Your Honor. Relevance.

THE COURT: Thank you. Sustained.

MS. MALIN: Could I just state my response? Just as to the expenses going into the household as whether or not --

THE COURT: It was already included in the mortgage.

MS. MALIN: And they were split again.

THE COURT: He's already testified to it.

MS. MALIN: I just wanted to know a number only to determine what the income was.

THE COURT: Already been testified to.

MS. MALIN: I understand, Your Honor.

BY MS. MALIN:

Q Was there a wood stove in the house, operating in this house?

A I don't think during that period, no.

Q Okay. Did Ms. Fraleigh ever give you cash during the period only between October '09 and, I'm sorry, April 30th, 2010?
A Occasionally if I was walking out the door and I didn't have time to hit an ATM I'd borrow cash from her.
Q Okay. And when you say borrow, I mean did you pay it back?
A If we paid it back, we paid it back. If we didn't, we didn't.
Q So your agreement with Ms. Fraleigh was to -- you each split the mortgage?
A That was very rigid, yeah.
Q Yeah. What was the purpose of that agreement?
A She was living there with her daughters and she wanted to pay something to live there, so I said, well, you're using half the house, pay off the mortgage if you want, so she did.
Q If she hadn't asked would you have made her pay it?
A Probably. I didn't --
MR. BAUER: Objection, Your Honor. Relevance --
THE COURT: Sustained.
MR. BAUER: -- to the fact she is paying it.
THE COURT: Sustained.
BY MS. MALIN:
Q You have a hot tub at the house, sir?
A During that period?
Q Yeah.

A I don't recall if we did during that period or not.
Q Prior to coming here today, sir, did you speak to anybody about your trial testimony?
A About the what?
Q Your trial testimony, your testimony here today.
A Yes, I did.
Q And who did you speak to, sir?
A I got a call from my cousin, Barbara Falcome (phonetic), and I spoke with Andy Stone and I spoke with Corey Madison.
Q Did you --
A And I think that was it.
Q And you spoke with no one else?
A Donna Fraleigh.
Q Okay. You did not speak with Brian Juran?
A No, ma'am.
Q You did not speak with Mr. Bauer?
A No, ma'am, not that I recall.
Q Have you ever spoke to Mr. Bauer about this matter?
A Not about this matter, no.
Q Have you ever gone to his office during the pendency of this proceeding with Ms. Fraleigh?
A I've definitely given her a ride there. Whether I was in the office when they were talking about it, I don't think so, but I've given -- given her rides there.
Q So you didn't attend any meetings?

A I don't think so.
Q Would Ms. Fraleigh come out and talk to you about what occurred in the office?
A Again --
MR. BAUER: Objection to relevance, Your Honor.
THE COURT: Sustained.
MS. MALIN: Well, Your Honor, you know, it goes to the credibility and the issue of fraud because if, in fact, Mr. Sekul was in the office when they were discussing what was going on on the facts of this case, they have waived the attorney-client privilege.
THE COURT: I understand. The one question -- I understand that. What the question was though, did she come out after speaking with her attorney and discuss what went on with the attorney? That's what I sustained.
MS. MALIN: But that's not a privileged discussion, Your Honor. Once she has disclosed it to a third party it is no longer privileged under the law.
THE COURT: I understand. I understand.
MS. MALIN: So I think that I have a right to hear that.
MR. BAUER: I'd still object as to relevance, Your Honor. How is that important to contributions to the household here?
MS. MALIN: It's important --

THE COURT: Yeah, that's what I'm trying to get to, too, but --

MS. MALIN: We have more than one issue here. We have a fraud issue, as well, Your Honor. Whether or not -- let's just assume for the record he's made $1,000 a month he contributed. If they -- if she didn't seek to defraud the Court by leaving that $1,000 a month off, there's no reason for us to be here. It's a very integral part of the action. It's what these parties discussed together, why this was left off, how it became that it got left off. And if you're willing to disclose conversations you have with your attorney regarding those issues we have -- you know, you no longer have an attorney-client privilege. He's not a husband.

THE COURT: I understand that. I know that.

MR. BAUER: Ms. Malin is looking for speculation here where I'm looking to see facts, and I have yet to see facts, Your Honor.

THE COURT: I agree. I am going to let you ask that question again though.

MS. MALIN: Thank you, Your Honor.

THE COURT: And I understand I'm going to change -- I'm going to overrule that objection.

Did you -- when she came out of the office, did she discuss what she talked with her attorney about?

THE WITNESS: She did not discuss specifics of what she talked with her attorney about.

BY MS. MALIN:

Q What did she discuss?

A Usually she came out in tears and said something about I can't believe this is going on so long and, you know, that son of an expletive and that's about as far as it went. Mr. Bauer was very good about not talking to me ever. Matter of fact, he told me he couldn't talk to me ever about it.

Q Did there come a time when you may have visited Mr. Juran's office after the petition had been filed with Ms. Fraleigh?

A Absolutely not.

MR. BAUER: Your Honor, asked and answered.

MS. MALIN: This is after.

THE COURT: No, this has not been asked and answered. I will overrule the objection. She asked before, not after.

THE WITNESS: At best I think one time I gave her a ride there, but I never went in the office ever again.

BY MS. MALIN:

Q Did she discuss with you what occurred at that time?

A No.

Q Are you still living together?

A No, absolutely not.

Q Why not?

A You didn't want drama, Your Honor, but do you want me to give the specifics?

MR. BAUER: Objection. Relevance, Your Honor?

THE COURT: Relevance I think is it, yeah.

MS. MALIN: Again it goes -- just for the record.

THE COURT: Okay. Go for the record.

MS. MALIN: It goes to the fraud issue and their relation --

MR. BAUER: Objection.

MS. MALIN: If I might, Your Honor.

THE COURT: Mr. Bauer?

MR. BAUER: Yes, Your Honor.

THE COURT: Would you please be quiet until she makes an explanation? How many times do I have to tell you that? Okay.

MS. MALIN: Your Honor, as soon as the adversary proceeding was filed in this matter, Ms. Fraleigh moved out of the home. There was no indication that there were any troubles prior to that, and in fact she was asked that at the 2004 exam. The question then -- and then as soon as she moved out of the home they started to assert that, oh, look, there was no relationship here because she moved out of the home and this is all, you know, just post-petition.

THE COURT: We're not there. There's -- I agree with the objection. It's not relevant.

MS. MALIN: Okay. As long as I have it on the record.

THE COURT: I had no clue that they were not living together.

MS. MALIN: I just want it on the record. It goes to the fraud issue as far as I'm concerned, Your Honor.

BY MS. MALIN:

Q Do you remember appearing in this court with regard to any issue in this case?

A I remember standing before Your Honor I think when this first came to court. I don't recall a date.

THE COURT: Did I mangle your last name?

THE WITNESS: I don't care if you did or didn't. I'm totally good with it. Please butcher it. How is that for an answer?

THE COURT: Doesn't make any difference.

BY MS. MALIN:

Q Did you -- and what was the purpose of appearing if you recall?

A It's been a while. I don't recall.

Q I'm going to show you Exhibit 25.

MS. MALIN: Can I approach him with this just so he can look at it?

THE COURT: He can see it.

THE WITNESS: Actually, it's coming through pretty clear.

THE COURT: I mean, we can all see it at the same time.

BY MS. MALIN:

Q All right. So just ask me to turn the page after you've read that or are familiar with -- or you become familiar with that.

A I am. It's definitely my handwriting.

Q Okay. So just tell me when you're ready and I'll turn the page.

A Okay. Turn the page.

THE COURT: No, don't turn the page for me.

THE WITNESS: Okay.

(Pause in proceedings.)

THE COURT: Okay. You can turn the page now.

(Pause in proceedings.)

THE WITNESS: Can I see that other page, the first page, when you're ready, Your Honor, real quick?

THE COURT: Sure, put it back. Put it back.

MS. MALIN: Done?

THE COURT: Put the first page back.

THE WITNESS: Okay, I'm good. Thank you.

MS. MALIN: I can turn it?

THE COURT: To the second one.

THE WITNESS: Okay. Yeah.

MS. MALIN: Oh, I'm sorry. Are we ready?

THE WITNESS: No, I'm good with both of them. Yeah.

MS. MALIN: Okay.

THE COURT: I'm not. Let me see the second one.

THE WITNESS: Okay.

MR. BURNS: Okay. The second page or the first?

THE COURT: Second.

MS. MALIN: Go ahead.

THE COURT: Okay.

BY MS. MALIN:

Q Are you ready, sir?

A I'm good, yes.

THE COURT: Okay. I'm finished. What about you?

BY MS. MALIN:

Q Are you ready, sir?

A I'm good as well.

Q Pointing, you see my pen point?

A Yes.

Q Okay. I'm just going to read it. "Well, I reside with Donna Fraleigh and her two minor daughters and involuntarily support Ms. Fraleigh's daughters." What did you mean by that, sir?

A Since Ms. Fraleigh had filed for bankruptcy she had no credit cards to use to pay bills which I believe she was doing, and I was picking up the slack for some of the household bills.

Q Just at the date of the filing?

A No. I mean, since the date of the filing.

Q But never before that?

A Nothing that I recall, but I do recall after the filing that I was responsible for a lot more. If I had any before the date of the filing, I don't recall.
Q So this supporting of Ms. Fraleigh's daughters strictly happened after the filing?
A I mean, define support. Would I give them a ride if they needed a ride? Of course.
Q I don't know. You define support. You put it in here.
A Yeah, but no, as far as support --
MR. BAUER: Objection, ambiguous and --
THE WITNESS: As far as support goes, after the filing Donna had no -- virtually no resources to pay some of the bills that she had been paying and I was picking up slack on some of the other bills.
BY MS. MALIN:
Q So she stopped making income as of the date of the filing?
A No, not that I know of.
Q Well, did her income change the date of the filing?
MR. BAUER: Objection. Speculation, Your Honor.
THE COURT: Yeah, I think speculation too here. As far as his knowledge, I think he's asked and answered that. Mr. Bauer is correct he's speculating. What he said was credit card -- credit was cut off.
MS. MALIN: Yeah, credit was cut off but not her income. I'm just establishing that she still had income.

THE COURT: Yeah, he -- but you asked it --

MS. MALIN: The same income she had before.

THE COURT: -- in such a way that it was a speculation. Okay.

MS. MALIN: Okay.

THE COURT: Rephrase the question.

MS. MALIN: Sure.

THE COURT: I will --

MS. MALIN: Prior --

THE COURT: I will sustain the objection.

MS. MALIN: I'm sorry.

THE COURT: Rephrase the question.

BY MS. MALIN:

Q Prior to the filing of the bankruptcy petition, where was Ms. Fraleigh employed?

A She was employed with the United States Postal Service.

Q Had her income changed prior to the filing of the petition?

A That I don't know.

Q Had her income changed in the period of October 2009 up until the date of April 30th, 2010?

A That I don't know.

Q Was she paying credit cards in that period of time?

A I don't know.

Q But prior to April 30th, 2010, she was paying her share of the household expenses?

A Yes. She was contributing satisfactorily to the household expenses prior to the filing.

MS. MALIN: Okay. Your Honor, I believe that at this time this is all the direct questions I have for this witness.

THE COURT: Okay.

MS. MALIN: I would like to reserve my right to redirect.

THE COURT: Okay.

MS. MALIN: Just after he crosses.

THE COURT: Right. I think we need a break here. Now then, you may step down.

I have a housekeeping matter here. We have ruled on the income issue, and I know you're going to do cross but I'm going to take a break.

MR. BAUER: My cross is going to take one question, Your Honor.

THE COURT: Okay. Well, just one moment though.

THE WITNESS: Stay here or --

THE COURT: Just stay then.

THE WITNESS: Stay?

THE COURT: Because if he says it's one question, my needs can wait.

You have other witnesses that go to income?

MS. MALIN: They go to whether or not he was operating a business and the fraud issue, and I'd just like to get him on the record and I'll call him very quick because I'm sure he'll object and you'll make a record and --

THE COURT: We'll do that.

MS. MALIN: Okay.

THE COURT: I would like to do that before you -- well, you're going to cross this witness right now.

Sit down, Ms. Malin. We're going to cross this witness.

CROSS-EXAMINATION

BY MR. BAUER:

Q Good morning, Mr. Sekul.

A Good morning, Mr. Bauer.

Q I have one question for you. Who owns the boat that Ms. Malin keeps referring to?

A The 2006 --

MS. MALIN: I would object to that, Your Honor. I don't see the relevance of who owns the boat. It's all a matter of contribution here.

MR. BAUER: If he owns the boat --

MS. MALIN: And it was not brought up at --

MR. BAUER: -- it's not a contribution to the household.

MS. MALIN: Then I'd ask did she ever ride on the boat? Did the daughters ride on the boat?

THE COURT: Okay.

MR. BAUER: Okay. Again --

THE COURT: Why do we care?

MR. BAUER: I just want to make the record clear that if Mr. Sekul owns the boat, any payments for the boat --

THE COURT: Okay. Ask that question and answer. Ask it.

BY MR. BAUER:

Q Mr. Sekul, do you -- who owns the boat that Ms. Malin keeps referring to?

A I do solely.

MR. BAUER: Thank you.

THE COURT: I don't necessarily disagree. Okay, go ahead.

MS. MALIN: Well, Your Honor --

THE COURT: No, go ahead. Ask your questions. I understand.

REDIRECT EXAMINATION

BY MS. MALIN:

Q Did you use that boat solely by yourself?

A No.

Q Did Ms. Fraleigh join you on the boat?

A Nobody -- did she come aboard? Yes. Nobody has ever operated it other than me.

Q I'm not asking that.

A Okay.

Q Did she ride on the boat?
A Did she ride on it? Sure.
Q Did she enjoy it?
A I think so.
Q Did her daughters go on the boat with you and Ms. Fraleigh?
A I'm trying to remember. I've had several boats. I'm trying to recall. I don't know if they went on this one or not to tell you the truth. I've had other boats. This is my second boat. I think they did.
Q Okay.
A But it's been a long time.
Q Did you take --
THE COURT: Okay. Go ahead. What were you going to ask? Go ahead.
MS. MALIN: I was just going to, you know, ask did his other children go out on the boat with him?
THE COURT: Oh, did your children go?
THE WITNESS: My kids do now even still, yeah. Yes.
BY MS. MALIN:
Q So they have all along?
A Yes. Yes.
THE COURT: Okay.
MR. BAUER: Objection as to relevance.
THE COURT: All right. I heard you. Anything else you wanted to ask?

MS. MALIN: Not at this point. Thank you.

THE COURT: Do you have any more questions of this witness? Ms. Malin, I would like to excuse the witness if possible.

MS. MALIN: Oh, I don't have any further questions for him. I just reserve my right that if something comes up contrary in Ms. Fraleigh's testimony that I be able to bring him back at the same time with Mr. Ehrlich if that's -- if we need Mr. Ehrlich. That was the guy that was excused.

THE COURT: And he was going to income also, and he's going to be just a continual witness of the other. I will object to Mr. Ehrlich because you've got the same kind of witnesses.

MS. MALIN: Okay. I understand that, but I would like him -- I don't know if I will need him to rebut anything that Ms. Fraleigh says. They did live together. I may need him.

MR. BAUER: While I would love to excuse Mr. Sekul -- he's a firefighter and I don't know if he was supposed to be on duty now -- my issue is if this trial can be done today, I want this trial to be done today.

THE COURT: Oh, I agree. That's not an issue. You got a beeper? You got a cell phone?

THE WITNESS: No, ma'am. Me and the other two gentlemen, Mr. Stone and Mr. Madison, we're all in the same group on the same platoon. We're all supposed to be protecting the city that you're sitting in right now, and we don't -- we don't get called.

THE COURT: So are we. We're a court.

THE WITNESS: Yeah. No, I hear you.

THE COURT: So I said no drama. Cut out the drama.

THE WITNESS: No, I'm just saying that we're supposed to be here.

THE COURT: I don't need it. I'm not going to excuse you as a witness. You can just go outside.

THE WITNESS: Okay.

THE COURT: Okay. Now, Ms. Malin, let's talk about the income ones that -- I need to take a break.

MS. MALIN: Okay.

THE COURT: But can we just -- if you have them, can we just line them up and you can put them --

MS. MALIN: I can bring them all in at the same time. I mean, I don't think it makes any difference that they're in here together. And I will do that while you take a break.

MR. BAUER: I think that would be acceptable.

THE COURT: Pretty good. Very good. Court's in recess.

THE CLERK: All rise.

THE COURT: We'll take a fifteen-minute break.

MS. MALIN: Thank you, Your Honor.

(Recess taken.)

(Proceedings resume.)

THE COURT: You may be seated. Ms. Malin, you have some witnesses you want to call?

MS. MALIN: Yes.

THE COURT: Okay.

MS. MALIN: I'd like to call Mr. Charles Goldsmith.

THE COURT: Mr. Goldsmith, if you'll come up this ramp and to the seat. Let me remind you that you have taken an oath already, and if you'll be seated.

CHARLES GOLDSMITH, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE COURT: State your full name.

THE WITNESS: Charles Goldsmith.

THE COURT: And your address, please, and if you'll speak into the microphone.

THE WITNESS: 3 Scott Court, town of Poughkeepsie.

THE COURT: Ms. Malin, he's your witness.

DIRECT EXAMINATION

BY MS. MALIN:

Q Hello, Mr. Goldsmith. I'm representing the plaintiff here today. I'm just going to ask you a couple of questions, and I'd just like you to slow me down if you don't understand what I'm asking. And if you don't know the answer to the question, feel free to state that you do not know the answer. Do you know a person named Christopher Sekul or Sekul?

A Yes.

Q Can you tell the Court for the record how you know him?
A Yes. I had a shed collapse from the snow a couple of years ago. I bought a shed from --
MR. BAUER: Objection, Your Honor. Relevance.
THE COURT: Sustained.
THE WITNESS: I bought --
THE COURT: He just -- that's enough.
THE WITNESS: All right.
THE COURT: He just worked for you is what we're getting at.
THE WITNESS: Yes, that's right. He worked for me.
THE COURT: Okay.
MS. MALIN: Okay.
THE COURT: Go ahead.
MS. MALIN: And for objection purposes --
THE COURT: Make your record.
MS. MALIN: I know.
THE COURT: Right.
BY MS. MALIN:
Q I'm sorry. I want to show you what's been marked as Plaintiff's Exhibit 5. Can you see that on your screen in front of you, sir?
A Yes.
Q Can you identify what that is for the record?
A Yes. That was payment to Mr. Sekul for taking down the

shed.

MR. BAUER: Objection, Your Honor. Relevance.

THE COURT: Very good. Sustained.

MS. MALIN: Okay.

BY MS. MALIN:

Q Did you pay him more than this sum of money for taking down the shed?

MR. BAUER: Objection, Your Honor, relevance.

THE COURT: Sustained.

BY MS. MALIN:

Q Do you know what the expenses of the job were, sir?

MR. BAUER: Objection, Your Honor, relevance.

THE COURT: Sustained.

MS. MALIN: I have no further questions, Your Honor.

THE COURT: Very good. May we excuse this witness?

MS. MALIN: Please.

THE COURT: You are excused. Thank you very much for coming to the court. We appreciate your time.

(Witness excused.)

MS. MALIN: The next witness I'd like to ask to the stand, Your Honor, is Susan Rivard.

THE COURT: Yes, Ms. Rivard.

Again, let me remind you that you are under oath. If you'll take the chair, please.

SUSAN RIVARD, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE COURT: State your full name.

THE WITNESS: Susan Rivard.

THE COURT: You need to speak into the microphone, please. And your address?

THE WITNESS: 389 Partners Road, Staatsburg, New York.

DIRECT EXAMINATION

BY MS. MALIN:

Q Ms. Rivard, do you know Christopher Sekul?

A Yes.

Q And can you tell me for the record how you know him?

A He did some work for me.

MR. BAUER: Objection, Your Honor, relevance.

THE COURT: Sustained.

Would you spell your name for the record? I'm so sorry.

THE WITNESS: Oh. R-i-v-a-r-d.

THE COURT: Very good.

BY MS. MALIN:

Q Can you explain to me what work he did for you?

MR. BAUER: Objection, Your Honor, relevance.

THE COURT: Sustained.

BY MS. MALIN:

Q Can you tell me what date the work was done?

MR. BAUER: Objection, Your Honor, relevance.

THE COURT: Sustained.

BY MS. MALIN:
Q I'm going to show you what's been marked as Exhibit 7 Plaintiff's. Can you see that on your screen, ma'am?
A Yes.
Q Can you identify that for the record?
MR. BAUER: Objection, Your Honor, relevance.
THE COURT: She can identify it.
MR. BAUER: Thank you.
THE WITNESS: Is this that I wrote -- I wrote --
THE COURT: Overruled.
THE WITNESS: -- I wrote the check? Is that what you need to know?
THE COURT: Yes, that's all we need.
THE WITNESS: Yes, I wrote that check.
BY MS. MALIN:
Q And you wrote that check to whom, ma'am?
A Chris Sekul.
Q And on what date, ma'am?
A November 4th, '09.
Q And can you tell me the amount?
A Eleven hundred eight dollars and twenty-eight cents.
Q And --
MR. BAUER: Objection, Your Honor. How much was the --
THE COURT: Eleven hundred and eight dollars and

twenty-eight cents.

THE WITNESS: Yeah.

MS. MALIN: I don't know if he has an objection or not.

MR. BAUER: I'm sorry. I'm looking at the numbers and now I'm reading --

THE COURT: You have an objection?

MR. BAUER: -- the language.

THE COURT: Okay. Go ahead.

BY MS. MALIN:

Q Okay. Did you pay --

THE COURT: Yeah, I see that, too.

BY MS. MALIN:

Q Did you pay any other amount to Mr. Sekul?

MR. BAUER: Objection, Your Honor, relevance.

THE COURT: Sustained.

BY MS. MALIN:

Q Did Mr. Sekul do any other work other than what is represented by this check?

MR. BAUER: Objection, Your Honor, relevance.

THE COURT: Sustained.

MS. MALIN: I think that we can excuse the witness.

THE COURT: Do you have -- may we excuse this witness? Mr. Bauer, may we excuse this witness?

MR. BAUER: I have no questions for this witness.

THE COURT: Very good. You may be excused. Thank you for coming. We appreciate your attendance at court.

(Witness excused.)

MS. MALIN: Thank you.

I'd like to call Mr. Rivard, please. It's Raymond. I'm sorry.

THE COURT: Is this the same -- same --

MS. MALIN: Yes. That's fine. It will be the same set of questions. He'll have the same objection.

THE COURT: The Court has the ability to exclude witnesses if you're just simply piling on.

MS. MALIN: Okay.

THE COURT: So go ahead.

MS. MALIN: I will state for the record that I'm going to ask him the same questions.

THE COURT: Okay. And you've already had her testimony, and it's her signing the check.

MS. MALIN: Yes.

THE COURT: Why do you need this man?

MS. MALIN: I just want him to also state on the record that he, in fact, knows that Mr. Sekul did work at the project.

THE COURT: That's -- sustained. I'm going to sustain Mr. Bauer's objection to this witness and I'm going to excuse the witness. You're excused. Thank you.

MR. RIVARD: Okay. Can we leave now?
THE COURT: Yes, you may.
MS. MALIN: Thank you very much.
THE COURT: And thank you very much for coming.
Next? The lady with the child? Let's do it.
MS. MALIN: Sure. Hold on. I just -- I'm sorry. I don' t--
THE COURT: I know.
MS. MALIN: What's your name?
MS. KARCHMER: Melissa Karchmer.
MS. MALIN: Karchmer? Melissa Karchmer, please.
THE COURT: Thank you.

MELISSA KARCHMER, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE COURT: Let me remind you you're under oath. State your name for the record.
THE WITNESS: Melissa Karchmer.
THE COURT: And your address, please -- spell your name, please.
THE WITNESS: K-a-r-c-h-m-e-r.
THE COURT: And your address, please?
THE WITNESS: 679 Partners Road, Staatsburg, New York, 12580.
THE COURT: Thank you.

DIRECT EXAMINATION

BY MS. MALIN:

Q Thank you. Do you know a Christopher Sekul?
A No, ma'am.
Q Do you -- you've never met him before?
A No, ma'am.
Q Was he ever on your property?
A My suspicion is he dealt with my husband --
THE COURT: Don't -- don't do your suspicions.
MR. BAUER: Objection as to relevance and speculation.
THE COURT: Exactly. Sustained. If you do not know him, you do not know him.
BY MS. MALIN:
Q I'm going to place what's been marked as Plaintiff's Exhibit 4. Do you see that?
A Yes, ma'am.
Q And can you identify it for the record?
A Identify it, meaning?
THE COURT: Is that your check?
THE WITNESS: Yes, ma'am.
THE COURT: Is that your signature?
THE WITNESS: Yes, ma'am.
THE COURT: Did you --
BY MS. MALIN:
Q Did you make it out --
THE COURT: Did you make it out --
BY MS. MALIN:

Q -- who did you make it out to?
A That was me that made it out, correct.
Q And who did you make it out to?
A Chris Sekul.
Q And how much was the check for?
A Nine hundred and thirty-seven dollars and forty-four cents.
Q And the date?
A 11/3 of 2009.
Q And it's your testimony today you have no idea why you wrote that check out?
A Well, my suspicion is that it --

THE COURT: No suspicion. If you don't know, say I don't know. "I don't know" is an excellent answer in court.

THE WITNESS: It says, "Platform for shed."

THE COURT: Okay. Very good.

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Very good. Sustained.

MS. MALIN: That's fine, Your Honor.

THE COURT: Very good. Are we finished with this witness?

MR. BAUER: I have no questions for this witness.

THE COURT: Ms. Malin?

MS. MALIN: Not at this time.

THE COURT: Very good. You're excused.

THE WITNESS: Thank you.

(Witness excused.)

MS. MALIN: Mr. Martin Conroy.

MARTIN J. CONROY, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE COURT: Let me remind you you're under oath. And state your name for the record.

THE WITNESS: Martin J. Conroy.

THE COURT: And your address, please?

THE WITNESS: 13 McAllister Drive, in Pleasant Valley.

THE COURT: The witness, yes.

MS. MALIN: Okay.

DIRECT EXAMINATION

BY MS. MALIN:

Q Sir, can you tell us whether you know Mr. Christopher Sekul?

A He did some work for me, so I know him in that regard.

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Very good. Sustained.

BY MS. MALIN:

Q Can you tell me what work he did for you, sir?

A He --

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Sustained. You don't have to answer that question.

BY MS. MALIN:

Q I'm going to show you what's been marked as Plaintiff's

Exhibit 3. You can see that?
A Yes.
Q Okay. Can you identify it for me for the record what it is?
A Yes. It's a check that I wrote to Chris Sekul on October --
MR. BAUER: Objection as to relevance.
THE COURT: He can identify the check.
THE WITNESS: -- on October 14th, 2009 for $605.50. And it has a memo on it, pad for shed, for ten-by-twelve shed.
MR. BAUER: Objection as to relevance with respect to that, Your Honor.
THE COURT: I'm going to overrule your objection, but I --
MS. MALIN: I understand.
THE COURT: Next question. Yes.
MS. MALIN: Sure.
BY MS. MALIN:
Q And was this payment for work that Mr. --
MR. BAUER: Objection as to relevance, Your Honor.
THE COURT: Very good. Sustained.
MS. MALIN: At least if I could just -- that's fine. But if I could just finish the question --
THE COURT: Certainly. Let her finish the question.
MS. MALIN: -- for clarity of the record?

THE COURT: Yeah.

MS. MALIN: And for the clarity of the record, at the end I'm going to ask that all these exhibits be entered into evidence so he can make one objection.

THE COURT: Okay.

MS. MALIN: I don't have --

THE COURT: Very good. You -- I sustained your obj.

Thank you very much. Can we excuse this witness?

MS. MALIN: Yes.

MR. BAUER: I have no questions for this witness.

THE COURT: Very good. You may be excused. Thank you. Thank you for coming today.

(Witness excused.)

MS. MALIN: Now I'm going to also call Ms. Florence Conroy. I'm not really sure of her relationship to --

MS. CONWAY: Husband/wife. We have the same address.

THE COURT: You need to say that on the witness stand. Come on. It's not relevant to me if you're sitting in the audience. He doesn't -- you don't need to get papers. You got to come up here and put your name on the record.

FLORENCE CONROY, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE COURT: And let me remind you you're under oath. State your full name.

THE WITNESS: Florence Kay Conroy.

THE COURT: And your address, please, Ms. Conroy?

THE WITNESS: 13 McAllister Drive, Pleasant Valley, New York.

THE COURT: And I'll ask the question. Were you married to the gentleman that was just on --

THE WITNESS: Yes, I am.

THE COURT: So you all have a joint checking account --

THE WITNESS: Long time. Yes, we do.

THE COURT: And so the check that was seen before you didn't write?

THE WITNESS: I didn't see it, but I assume if his signature was on it, yes.

THE COURT: Okay. You did not. Okay.

Do you have another one?

MS. MALIN: Another check? No, not at this time, Your Honor.

THE COURT: Very good.

MR. BAUER: Objection as to relevance and --

THE COURT: Very good. I'll sustain the relevance of this witness.

MS. MALIN: Okay.

THE COURT: Very good. You may go. Thank you.

Excuse me. Does anyone need her to stay?

UNIDENTIFIED: No.

MR. BAUER: I have no questions for this witness.

THE COURT: You do?

MR. BAUER: I do not have any questions for this witness.

THE COURT: Oh, I was going to say, you did? Shock. I went, wait. You all have a good day and thank you for coming.

THE WITNESS: Yes. Thank you very much.

(Witness excused.)

THE COURT: Okay. Next?

MS. MALIN: Your Honor, I called -- call Mr. Ed Lynch as a representative of Vassar Brothers Institute.

THE COURT: Okay.

MR. CHRISTENSEN: (Indiscernible).

THE COURT: We'll take you for a minute. As you see, we're running through some witnesses pretty fast here.

ARNE C. CHRISTENSEN, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE COURT: Let me remind you that you're under oath. And please state your name.

THE WITNESS: My name is Arne C. Christensen.

THE COURT: And your address, please?

THE WITNESS: 50 Patrick Drive, Lagrangeville, New York.

THE COURT: And you said you had a position that was different. What was that position?

THE COURT: I'm the treasurer of Vassar Brothers Institute, a non-profit in Poughkeepsie.

THE COURT: Very good.

THE WITNESS: Ed Lynch is the secretary. He received the original summons and passed it to me.

THE COURT: He received the summons. But you were the treasurer so you dealt with the money?

THE WITNESS: Right.

THE COURT: Very good.

DIRECT EXAMINATION

BY MS. MALIN:

Q Can you state for the record what period of time, sir, that you were treasurer for Vassar Brothers Hospital (sic)?

A Not Hospital, it's -- Vassar Brothers Institute.

THE COURT: Vassar Brothers Institute.

BY MS. MALIN:

Q Institute. I apologize. I apologize.

A 2004 through current.

Q And, as treasurer, you are responsible for writing all the checks?

A Yes.

Q And do you know a Mr. Christopher Sekul?

A I probably met him once.

Q Okay. And what was the purpose of that meeting, sir?

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Well, the purpose of the meeting, once he answers, you can object.

THE WITNESS: He was a -- he's a fireman and we have -- at the time, we required a fireman and a policeman to be present when we had our -- our travelogue shows in the Poughkeepsie High School, and I wrote him a check for that one --

THE COURT: Now then --

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Very good. Sustained.

BY MS. MALIN:

Q Okay. For -- I'm showing you what's been marked as Exhibit 6. Do you see that, sir?

A Yes. I have a copy right here.

Q Can you identify what that is for the record?

A That is a check for Chris Sekul for $144.40 for present -- being present as a fireman at the Vassar Brothers Institute on January 6, 2010.

THE COURT: And is that your signature?

MR. BAUER: Objection as to relevance.

THE WITNESS: That is my signature.

THE COURT: Spell your name for us, please.

THE WITNESS: A-r-n-e, middle initial C, C-h-r-i-s-t-e-n-s-e-n.

THE COURT: Very good. I will sustain your objection.

MS. MALIN: Thank you, Your Honor. I have no further questions.

THE COURT: Very good. May I excuse this witness?

MS. MALIN: As far as I can tell, yes.

MR. BAUER: No questions for this witness, Your Honor.

THE COURT: Thank you very much. We appreciate you coming in.

(Witness excused.)

MS. MALIN: Your Honor, the next witness is Mr. Stone.

ANDREW R. STONE, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE COURT: Let me remind you you're under oath. And you may be seated.

Oh, one of the same kind. State your name.

THE WITNESS: Andrew R. Stone.

THE COURT: And your address, please, Mr. Stone?

THE WITNESS: 1610 Route 199, Red Hook, New York.

THE COURT: He's your witness.

MS. MALIN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. MALIN:

Q Can you tell me if you know Mr. Sekul, Christopher Sekul?

A Yes, I do.

Q And how do you know him, sir?

A We work together at the firehouse.

Q Do you work together anywhere else?

A No.

Q Have you ever hired Mr. Sekul to do work on your property?

A Yes, I have.

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Sustained.

BY MS. MALIN:

Q Did you pay him for that work?

MR. BAUER: Objection as to relevance, Your Honor.

THE WITNESS: Yes, I did.

THE COURT: Sustained. Don't answer until he says and I say.

THE WITNESS: Okay.

THE COURT: He gets to object, I get to decide, and then you get to -- I know. Okay.

BY MS. MALIN:

Q I'm going to show you what's been marked as Plaintiff's Exhibit 8, sir. Could you identify what that is for the record?

A Yes, I can.

Q Would you please do so?

A That's a check I wrote to Chris for some work he did at my house.

THE COURT: And that's your signature?

THE WITNESS: Yes.

BY MS. MALIN:

Q And the date on that check, sir?
A March 14, 2010.
Q And does that correspond with the time that the work was performed?
MR. BAUER: Objection, Your Honor.
THE COURT: Sustained.
MR. BAUER: Relevance.
THE COURT: Sustained.
BY MS. MALIN:
Q Did you pay him more than $250 for the --
MR. BAUER: Objection.
BY MS. MALIN:
Q -- job?
THE COURT: Let her --
MR. BAUER: I'm sorry.
THE COURT: Excuse me. Time out, everybody. Let her finish the question; let him stand up; let me rule; and then we'll decide whether you can.
Finish your question.
BY MS. MALIN:
Q Did you pay him more than $250 for the job performed on your property at that time?
MR. BAUER: Objection as to relevance, Your Honor.
THE COURT: Sustained.
BY MS. MALIN:

Q Did he perform any other jobs on your property during the period of October 2009 through April 30th, 2010?

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Sustained. Do not answer.

BY MS. MALIN:

Q Did he perform any work that you may have paid him for in that same period --

MR. BAUER: Objection --

BY MS. MALIN:

Q -- other than this job?

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Sustained.

BY MS. MALIN:

Q Did Mr. Sekul ever hire you to do any work for his business?

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Sustained.

MS. MALIN: That's fine.

THE COURT: Can we excuse this witness?

MR. BAUER: I have no questions for this witness, Your Honor.

THE COURT: And, Ms. Malin, can we excuse this witness?

MS. MALIN: Sure.

THE COURT: Thank you for coming, and thank you for your service to the community.

(Witness excused.)

MS. MALIN: Thank you, sir.

THE COURT: One more?

MS. MALIN: Yes. Corey J. Madison.

COREY J. MADISON, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN

THE COURT: Let me remind you you're under oath.

THE WITNESS: Yes, Your Honor.

THE COURT: If you will give us your full name?

THE WITNESS: Corey J. Madison.

THE COURT: And your address --

THE WITNESS: 89 West Long Meadow Drive, Staatsburg, New York.

THE COURT: Very good.

MS. MALIN: Thank you.

DIRECT EXAMINATION

BY MS. MALIN:

Q Mr. Madison, can you tell me whether or not you know Christopher Sekul?

A Yes.

Q And how do you know him, sir?

A I work with him at the fire department.

Q Has he ever done any work on your property?

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Sustained.

BY MS. MALIN:

Q Would he have done any work on your property for the period of October 2009 through April 30th, 2010?

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Sustained.

BY MS. MALIN:

Q I'd like to show for you Plaintiff's Exhibit 15. Showing you --

THE COURT: She's seen --

THE WITNESS: Okay.

THE COURT: He's waiting for a question.

MS. MALIN: I know. He's waiting for me. I wasn't looking at him.

THE COURT: We're all waiting for you.

MS. MALIN: I got that.

BY MS. MALIN:

Q Can you identify this for the record, please?

A That's a check that I wrote.

Q And who -- to whom did you write it?

A C.P. Sekul.

Q Is that Christopher Sekul?

A Yes.

Q And what was the purpose of the check, sir?

MR. BAUER: Objection as to relevance, Your Honor.

MS. MALIN: You let the other ones testify to that.

THE COURT: Yeah. You've got to -- well, just -- because --

MR. BAUER: For identification only.

THE COURT: Well, when he says that, then you object, yeah. Okay.

THE WITNESS: I'm not sure, but I believe I did have him pick my motorcycle up from service. I'm not even sure of that.

MR. BAUER: Objection as to relevance, Your Honor, and speculation.

THE COURT: Okay. Speculation, and to relevance. I will sustain the objection.

BY MS. MALIN:

Q So you have no idea why you wrote out this check?

THE COURT: Oh, yes it is. Yes, it is.

MR. BAUER: Now I'm -- objection, Your Honor. Asked and answered.

THE COURT: It is.

MS. MALIN: No, I asked him if he had any idea why he wrote the check out. That's all.

THE COURT: This is January -- this is 2009, anyway, March 2009.

MS. MALIN: I understand. But I'm just base -- I'm just laying -- he can object. He's objected.

THE COURT: He's objected. Go ahead. Go ahead.

MR. BAUER: This is more than six months pre-petition.

THE COURT: I understand. Sustained.

MS. MALIN: Okay. And all I'm doing -- again, just to establish the record for the business.

THE COURT: Right.

BY MS. MALIN:

Q Did Mr. Sekul ever pay you any money?

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Paid money. That's not work done. So, yes, you can answer that. Overruled.

THE WITNESS: I'm not sure. Paid money for what?

BY MS. MALIN:

Q Any reason. Did you ever -- did Mr. -- did Mr. Sekul ever write out a check to you?

A He possibly have (sic).

Q And what would be the purpose that he'd possibly write out a check for you?

A I poured some concrete at his house probably in maybe 2009, 2008. I'm not sure.

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: This might be relevant, so I'm going to let her ask these questions. 2008, 2009?

THE WITNESS: I'm not quite sure, though. I'm --

THE COURT: Okay.

BY MS. MALIN:

Q And how much would those checks have been for, do you know?
A I don't even know at this time, no.

THE COURT: This is him paying Mr. -- not Mr. -- Mr. Sekul paying him.

MR. BAUER: More than six months pre-petition.

THE COURT: Okay. That's the question, then.

MR. BAUER: It's not relevant --

THE COURT: And that -- and Mr. Bauer is right. What's the time frame here? You said 2009. The end of 2009?

MR. BAUER: The check is dated March 9th.

THE COURT: No, no, no, no, no. That's not the question, Mr. Bauer. The question is, did Mr. Sekul pay Mr. -- I'm sorry --

MS. MALIN: Madison.

THE COURT: -- Madison anything --

MS. MALIN: And he said --

THE COURT: -- for work around the house. It is relevant. It's household.

MR. BAUER: I believe he testified it was 2008.

MS. MALIN: No, he said 2009.

THE COURT: He did say --

THE WITNESS: Maybe. I'm not even sure.

MR. BAUER: I'm sorry.

THE WITNESS: I'm not even sure. I --

THE COURT: Just listen carefully.

THE WITNESS: Okay.

BY MS. MALIN:

Q Was there ever a time in 2010 when checks were written to you by Mr. Sekul?

A I can't recall at this time.

MR. BAUER: Objection as to relevance and speculation.

THE COURT: Overruled.

MS. MALIN: Thank you, Your Honor.

BY MS. MALIN:

Q I'm going to show you what's been marked as Exhibit 14, Plaintiff's Exhibit 14. Can you see that, sir?

A Yeah, but it's not very legible.

Q Can we blow it up? We can blow it up.

A I'm having trouble reading the dates on it.

THE COURT: We're blowing it up. We're blowing it up.

(Pause in proceedings.)

THE COURT: There you go. Now they can move it around so they can see it.

MS. MALIN: I can't see it, though.

THE COURT: Pull it down. Just pull it down a bit.

MS. MALIN: Yeah, it's just the two. It's two --

THE COURT: Just the two at the bottom?

THE WITNESS: Just two at the bottom?

MS. MALIN: It's the one here and the one here.

THE COURT: Okay. Move -- if you would, take your hand to it and move it there. Now can you see?

MS. MALIN: Do you want me to do bigger?

THE COURT: Yeah, do it bigger. Right there, and make it bigger. There. We got it.

THE WITNESS: Okay.

BY MS. MALIN:

Q Do you see them?

A Yeah. I can't see what's written in the memo. I can't make that out.

Q Okay. But you can see the check, right?

A I can see it's a check --

MR. BAUER: Objection to relevance. These are dates post-petition, Your Honor, these checks.

MS. MALIN: In the --

THE COURT: That's true. That is post-petition. What are we trying to find out here?

MS. MALIN: I'm just -- I'm asking him what the purpose of the checks were for --

THE COURT: No, what are you trying to find out here? Tell me what you're --

MS. MALIN: Whether or not -- it directly relates to whether or not he did work at the house, whether this was the ending work of the house, whether the house work was done prior to that period --

THE COURT: Okay. Ask those -- ask the questions instead of the checks. Okay.

MS. MALIN: Okay.

BY MS. MALIN:

Q During the period of October 2009 through October 2000 -- excuse me -- April 2010, did you do any work at Mr. Sekul's property -- at 30 Battenfeld Road, Milan, New York?

THE COURT: Don't look at the checks because it's not relevant yet. That's not relevant yet.

THE WITNESS: Yeah, yeah. I don't know. I cannot recall at this time the exact date. I really can't.

BY MS. MALIN:

Q But you did do work in 2010, sir?

A I'm not sure of the exact year. I --

MR. BAUER: Objection.

THE WITNESS: -- really don't know.

MR. BAUER: Asked and answered, Your Honor.

BY MS. MALIN:

Q Do these --

MR. BAUER: Calls for speculation.

THE COURT: Mr. Bauer?

MR. BAUER: Yes, Your Honor.

THE COURT: I'm getting aggravated at the witness, not you.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: Okay. Did you work at his house?

THE WITNESS: I poured some concrete for him, but --

THE COURT: When?

THE WITNESS: I -- it seems like a really long time ago, but I don't remember exactly when or even the time. I --

THE COURT: What kind of concrete? What did you pour the concrete for?

THE WITNESS: A little pad underneath his porch. It was a small little, you know --

THE COURT: And it's -- if I saw the checks, it's a total of $1,200? No, it's not. It's a total of --

MS. MALIN: Twenty-three, it looks like, Your Honor.

MR. BAUER: Six months post-petition.

THE COURT: I understand, Mr. Bauer.

MR. BAUER: Thank you, Your Honor.

THE COURT: I'm having problems with the credibility of this witness and I'm trying to assess the credibility of this witness period. It seems to me that if I poured concrete for somebody and fixed the house, I'd remember.

THE WITNESS: It has been two years, Your Honor.

THE COURT: This is -- this was not two years past that. And Ms. Malin's question is correct: Was this started in the spring and finished later, or when was this done?

MR. BAUER: But a payment was made post-petition. How is it relevant to --

THE COURT: I understand.

MR. BAUER: -- to contributions to the household?

THE COURT: I've heard you.

MR. BAUER: Thank you.

THE COURT: How many pads do you pour a year?

THE WITNESS: Not many. I'm a fireman. I just --

BY MS. MALIN:

Q Was this the first pad you ever poured?

A No, no, no, no. I -- like I say, I mean, I did it at work -- I work with him, you help them out, you know.

Q What do you mean you worked with him?

A I work with him at the fire department.

Q Okay. Do you work with him anywhere else than the fire department?

A No. No.

Q We know that you have because you worked at his house --

MR. BAUER: Objection, Your Honor.

THE COURT: Yeah. Don't argue with the witness. I'm the only one that's going to argue with the witness. And right now, your credibility is going far away from me. Okay.

Now, then, you say you don't pour many pads. You remember pouring this pad. When did you first start pouring this pad?

THE WITNESS: I would have to say 2010 would be sometime -- yeah, I -- yes, 2010. I'm -- I don't know. I mean --

BY MS. MALIN:
Q How well do you know Mr. Sekul?
A I work with him at the fire department and --
Q And are you friends with him outside of the fire department?
A Yeah. We --

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: I agree. Sustained.

MS. MALIN: Goes to credibility. Goes to credibility.

THE COURT: I know. The credibility here is shot. But it -- he's not -- he's not testifying to anything.

MS. MALIN: Your Honor, I don't have any more questions for him.

THE COURT: Mr. Bauer?

MR. BAUER: I don't have any questions for this witness, Your Honor. Thank you.

THE COURT: You're excused.

THE WITNESS: Your Honor, I'm sorry for the --

THE COURT: That's fine. But next time you go to court, be sure you have a memory lesson on some stuff.

(Witness excused.)

MS. MALIN: Your Honor, at this time, that's the last -- obviously the last witness for that stint of questions. I would just ask that the -- I'm going to go to each exhibit and then make the separate objection.

THE COURT: Okay.

MS. MALIN: I would ask that the --

THE COURT: Why don't you do all the -- excuse me. I think for --

MS. MALIN: -- exhibit --

THE COURT: -- everything except Mr. -- the last witness.

MS. MALIN: Okay.

THE COURT: Because the last witness was him making payments, whereas all before was payments to him. Am I correct?

MS. MALIN: Correct.

THE COURT: And does that not preserve it for you on appeal?

MS. MALIN: One of the checks was a payment to and by Mr. Madison. So I'll --

THE COURT: Put that in -- include that.

MS. MALIN: -- put them all together. Okay.

MR. BAUER: Is that post-petition, Your Honor? I --

THE COURT: Excuse me?

MR. BAUER: Was that post-petition, the checks she's referring to?

THE COURT: Yeah. Make sure that all of those --

MS. MALIN: No, it was pre.

THE COURT: Okay. Make sure that all of those that you're asking for admission show it. Okay. March the 13th -- that's pre-petition.

MS. MALIN: Okay. But he can object. I'm just --

THE COURT: Okay. No, no, no. No, no, no. That's not the point. That's not what I'm trying to say. That one needs to be separate --

MS. MALIN: Separate, okay.

THE COURT: -- and then the ones that are in the six-month period of time, you can put those all in one lump --

MS. MALIN: Okay.

THE COURT: -- and then we'll go from there.

MS. MALIN: Okay.

THE COURT: That's what we're trying to do. In other words, we're trying to make it clean for the Court and for the Appellate Court if you go on appeal if you need to.

MS. MALIN: Okay, fine. I'm sorry.

I am going to ask Your Honor at this time that Exhibit -- Plaintiff's Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7, and Exhibit 8 be entered into evidence.

THE COURT: Okay. If you would please then just very -- very smoothly and very quickly do those exhibits so Mr. Bauer can see them, and we're doing this as a group. Okay. Exhibit?

MS. MALIN: 3.

THE COURT: Okay. And that's October the 14th, '09.

Okay.

MS. MALIN: Exhibit 4.

THE COURT: 11/3/09 is the date.

MS. MALIN: Do you want me to --

THE COURT: No, he's going to -- this is a group.

MS. MALIN: Okay. Exhibit 5.

THE COURT: March 10th, '10.

MS. MALIN: Exhibit 6.

THE COURT: January 6, '10.

MS. MALIN: Exhibit 4 -- I'm sorry, 7. I don't know how I read that as a 4.

THE COURT: 7 -- this is Exhibit 7? 11/4/09. Mr. Bauer, do you have any objection --

MR. BAUER: I object as to the relevance, Your Honor.

THE COURT: Very good.

MS. MALIN: I have one more check.

THE COURT: One more at that time? Put it in.

MS. MALIN: Exhibit 8.

THE COURT: Exhibit 8, 3/14/10. Very good.

And, Mr. Bauer, you have an objection --

MR. BAUER: Objection as to relevance.

THE COURT: -- to this group of checks in this time frame that is six months before the filing of the petition, and I will sustain your objection.

MR. BAUER: Thank you, Your Honor.

THE COURT: Was I correct in your objection?

MR. BAUER: That's correct, Your Honor. Thank you.

THE COURT: Very good. Now, then, the next check? You had two more I think you wanted to put in.

MS. MALIN: Correct. And I think we're doing them separately because one's --

THE COURT: They are separate entities.

MS. MALIN: Right.

THE COURT: Okay. This is 3/13/09, Exhibit number what?

MS. MALIN: Exhibit Number 15.

THE COURT: And this is outside the six-month prior --

MS. MALIN: Six months.

THE COURT: Mr. Bauer?

MR. BAUER: I object, Your Honor, as to relevance.

THE COURT: Very good. I will sustain the objection as to relevance on that check. And then these are income to Mr. Sekul?

MS. MALIN: These are checks written to Corey Madison, Your Honor.

THE COURT: To Corey Madison from Mr. Sekul?

MS. MALIN: Correct, from Mr. Sekul.

THE COURT: Oh, I'm sorry. I was misinformed on that. This -- excuse me. You're right. I remember. This is where Mr. Sekul has paid Mr. Madison for pouring of concrete.

MS. MALIN: Before --

THE COURT: And this was post-petition? All these checks were post-petition?

MS. MALIN: These particular checks are, yes, in fact, post-petition.

THE COURT: Very good. Mr. Bauer?

MR. BAUER: I object as to relevance. But can I -- can I have what exhibit this is supposed to be?

THE COURT: Oh, yeah, would you --

MS. MALIN: 14.

THE COURT: 14. You can't see it on the -- you can't --

MR. BAUER: This is 14.

MS. MALIN: Oh, he can't see it? I'm sorry. I apologize.

THE COURT: He can't see it.

MR. BAUER: Thank you.

THE COURT: Pull it up just a little bit more so he can see it clearly. There. It's Plaintiff's Exhibit 14, Mr. Bauer.

MR. BAUER: Very good. Thank you.

THE COURT: Very good. I will sustain the objection.

Okay. Now, then, thank you for that.

MS. MALIN: Thank you very much, Your Honor.

THE COURT: I'm just trying to make the record clear also.

MS. MALIN: Your Honor, at this time, I would just ask for a twenty-minute break. I just want to run and get a sandwich and come back.

THE COURT: I think we all should take a break.

MS. MALIN: Yeah. And then I have two more witnesses. I have Ms. Fraleigh --

THE COURT: I'm going to give you until one o'clock.

MS. MALIN: Thank you.

THE COURT: Very good.

(Recess taken.)

(Proceedings resume.)

THE COURT: Ms. Malin?

MS. MALIN: Yes.

THE COURT: Your next witness?

MS. MALIN: Ms. Donna Fraleigh, please.

THE COURT: Did I -- yeah, go all the way up.

MS. FRALEIGH: Do I need my glasses for anything?

THE COURT: You might.

MS. MALIN: She may need to look at documents.

THE COURT: Me, I've gotten to where I can't eat without mine on. I know, I hate it. I hate it. I swore you in before. Is that correct?

MS. MALIN: I don't think she --

THE COURT: Raise your right hand.

DONNA FRALEIGH, WITNESS FOR THE PLAINTIFF, SWORN

THE COURT: Please take a seat and tell us your name.

THE WITNESS: Donna Marie Fraleigh.

THE COURT: And you're going to have to speak a little clearer into the microphone.

THE WITNESS: Donna --

THE COURT: Go ahead.

THE WITNESS: Donna Marie Fraleigh.

THE COURT: And your address, please?

THE WITNESS: 119 Forbus Street, Poughkeepsie, New York, 12603.

THE COURT: Very good.

MS. MALIN: My -- okay.

DIRECT EXAMINATION

BY MS. MALIN:

Q Ms. Fraleigh, I'm going to ask you a few questions. Again, like at the deposition, if I move too quickly please slow me down and I will re-ask them so you understand them.

Do you know Christopher Sekul?

A Yes.

Q And how do you know him, ma'am?

A I had a relationship with him.

Q And when was -- did that relationship commence?

A 2004.

Q And what kind of relationship was it in 2004?

A We dated.
Q Okay. Did there come a time when it became more serious than just dating?
A We moved in together.
Q And around when was that, ma'am?
A The end of the summer in '06.
Q So around August '06?
A Correct.
Q Okay. When you started to reside with -- excuse me. Strike that.
Before you moved in with Mr. Sekul, did you have any conversations with him regarding how the household expenses were going to be managed?
A Casual conversations and basically I would pay half the mortgage and then we'd see where it went from there.
Q Okay. So then you start to live with him and you start to get bills at the household. How did it go from there?
A Well, it was a little more complicated than that.
Q Okay.
A Because we had a house fire. So we were living in a rental. So the bills were a little bit not so cut and dry. But for the most part, as far as my recollection, we pretty much tried to each pay half.
Q Okay.
MR. BAUER: Objection as to relevance of anything

beyond the six months prior to the petition date.

MS. MALIN: Just establishing a history.

THE COURT: I'm going to say -- I'm going to -- I will let you renew that objection at some point. We're just beginning, getting a little history here. I will -- just be aware. I'm going to at this moment overrule your objection. But be aware. I think Ms. Malin is aware. She's getting some history.

MS. MALIN: Just a little history just to set the scene.

THE COURT: Right.

BY MS. MALIN:

Q Were you employed at the time? Excuse me. Were you employed at the time you moved in together?

A Yes.

Q And who lived with you at that time, other than Mr. Sekul, obviously.

A My two daughters.

Q What about his two children?

A On occasion.

Q How -- what do you mean by on occasion? Did they -- what period of time did they live with you?

A On and off. I don't know specifically.

Q So --

THE COURT: It's not a trick question. It's not a trick question.

THE WITNESS: But it wasn't -- it's not a simple answer. He was constantly battling court with his ex, so the visitation changed. So it was sporadic.

BY MS. MALIN:

Q Okay. So they were visiting at the house. He didn't have custody?

A They both had joint custody.

Q Okay. So they'd share time? I'm just trying to get an idea of what the household was --

A They had joint custody, so they --

Q I don't know what that means. That's what I'm asking.

A You don't know what joint custody means? They both --

THE COURT: No, no, no. Excuse me. Don't argue with Ms. Malin. And she's not trying to trick you. It's not a trick question.

THE WITNESS: Well, I thought I answered --

THE COURT: What does joint custody mean for them as far as you were concerned while living in the household?

THE WITNESS: The kids were each parent some of the time.

THE COURT: Half-time?

THE WITNESS: Like I said, it changed.

THE COURT: Okay.

BY MS. MALIN:

Q So how about in 2006 when you first moved in together?
THE COURT: Were they more times with you than with them -- with her?
THE WITNESS: I really couldn't say.
THE COURT: Okay. That's enough.
BY MS. MALIN:
Q But your children were consistently with you other than visitation with their father?
A Yes, because he hardly visited.
Q Was he a usual guest at your house visiting them?
A Excuse me?
Q Was Mr. Fraleigh a usual guest at the house visiting them?
THE COURT: She said he didn't. Okay.
MS. MALIN: I just want to know -- I mean, she said he's visiting. I just wondered if he was maybe involved in --
THE COURT: Let me just do something right here, Ms. Fraleigh. Answer the questions that are asked. I don't need editorial comments. This is not about child custody. It's about money. So keep it to the money.
BY MS. MALIN:
Q Was Mr. Sekul employed at the time?
A Yes.
Q When you first moved in together?
A Yes.
Q And that was where?

A The City of Poughkeepsie Fire Department.
Q Anywhere else?
A Not that I know of.
MR. BAUER: Objection as to relevance, Your Honor.
THE COURT: Sustained.
MS. MALIN: Thank you, Your Honor.
BY MS. MALIN:
Q Back in 2006, do you know around what your monthly -- the monthly household expenses were?
MR. BAUER: Objection as to relevance, Your Honor. It's 2006.
THE COURT: Yeah. Tell me where you're going with this --
MS. MALIN: Just a history, Your Honor. She said that they paid -- each paid half. She just testified to that. So I'm just getting an idea of the history so that if we bring it forward, that the history didn't -- that these people have a way of living together. And I want to establish that it started in 2006 and continued to 2010.
MR. BAUER: I think we need to look at six months pre-petition, not 2006.
THE COURT: I'm going to overrule your objection. I'd like to hear this.
MS. MALIN: Thank you.
THE WITNESS: Can you repeat the question?

BY MS. MALIN:

Q Sure. When you guys first started to live together, I know it was not in the actual residence, but do you have any idea what your monthly household expenses were?

A Other than half the mortgage, no.

Q So you don't know what the food was, what the electric cost?

A No.

Q And you were living with Mr. Sekul in 2007?

A Part of 2007.

Q Part of 2007 you were moved out?

A Yes, I did.

Q Okay. Did you move back in at some point in time?

A I moved back in with him at sometime, yes.

Q Do you know when that was?

A 2008.

Q Okay. Did you live with him in 2009?

A Yes.

Q Did your girls also live with him in 2008 when you moved back in?

A Yes, they did.

Q Did they live with you in 2009?

A Yes, they did.

Q And in 2008, did you continue to share the expenses as half as you stated before in 2006, the household expenses?

A   For the most part, yes.
Q   Okay. Same as 2009?
A   Pretty much, yeah.
Q   Okay. Thank you.
    And when we come to 2010, did you share the expenses pretty much half at that time as well?
A   At what part of 2010 are we talking about?
Q   Let's say 2000 -- January --
        THE COURT: Pre-filing and post-filing. I'm giving you the question because I'd like to know the answer.
BY MS. MALIN:
Q   Okay. So the whole year of 2010 --
        THE COURT: We'll start with --
        MS. MALIN: Pre-filing?
        THE COURT: -- pre-filing which was April the 30th, 2010.
BY MS. MALIN:
Q   Back. Okay.
    So -- okay. So that would be January 2000 --
        THE COURT: Do the October to --
        MS. MALIN: Okay. I'm sorry. I apologize.
        THE COURT: Thank you.
BY MS. MALIN:
Q   October 2009 through April 30th, 2010, you were half --
A   Yes, it --

Q -- half expenses?

A Yes.

Q Okay. Do you know -- do you have any idea at that time about how much was being contributed by you for half those expenses?

A Well, I know I paid the Direct TV bill, which I think was around 150 a month. I paid the garbage bill which I really can't tell you off the top of my head, it's been a while, what it was. But I had specific bills in my name and he had specific in his. And for the most part, it seemed like they'd average out. Like if I paid certain bills, it would be half of other bills that -- instead of giving him for. So --

Q Okay. I understand that. But do you have any idea, any recollection what your monthly bills were running you total for the household? Just what it was costing you to run the household?

A All together, or my half?

Q Overall together.

A I don't recall. I mean, I can try to do the math in my head if you want.

Q Would it help you to have a calculator? I don't know -- can we get her a calculator?

MR. BAUER: Objection. Calls for speculation, and argumentative.

THE COURT: I was going to say, why don't we just give her petition.

MS. MALIN: That might not have -- it certainly would cover the time prior to. But if she's willing to testify that it covered the time prior to?

THE COURT: Doesn't it, Mr. Bauer? I'm not -- I'm just trying to -- I'm trying to get to where we all want to be at the same time and not have somebody just trying to pull figures off the top of their head.

MR. BAUER: I think that's what's happening here, and that's what I'm objecting to, Your Honor.

THE COURT: Yeah, I agree.

Ms. Malin, help us here.

MS. MALIN: Okay.

THE COURT: I don't like the idea that -- I mean, surely, there's something that says what the expenses were during that period of time and she can look at it. Didn't -- I don't know what you're trying to do. I mean, there's no reason to try to trip her up.

MS. MALIN: But there's no tripping her up, Your Honor.

THE COURT: I know, but --

MS. MALIN: It's just general basic background --

THE COURT: -- you and I aren't going to remember what happened at the beginning of 2010. Can you help us put something there so we can --

MS. MALIN: I can put to you that I know what my bills are on a monthly basis and so do most of my clients. I'm just asking her for a general idea, what was coming into the household --

THE COURT: Yeah, but I -- you couldn't -- I agree, you couldn't do it without adding it up. So what have we got? Don't we have something?

MS. MALIN: Well, I -- nothing that would cover the period of time from October 2009 to April 30th, 2010. The only documentation that we would have, Your Honor, that would reflect what she believed her expenses were at the time would have been in Schedule I and Schedule J of her bankruptcy petition. Maybe somewhat on her means test which would be six months prior to, but as you know --

THE COURT: Can't you do it one-by-one or something?

MS. MALIN: I can go over her petition with her. But that's only as to the date.

THE COURT: Mr. Bauer, help me here because I'm --

MR. BAUER: Well, plaintiff has been given bank statements --

THE COURT: Yeah.

MR. BAUER: -- of the defendant --

THE COURT: Surely there's something that you can --

MR. BAUER: -- for the six-month period --

THE COURT: -- start cross-examining -- and this is for the purposes of crossing, that you can start doing it. I mean --

MS. MALIN: Well, I can --

THE COURT: -- why are we wasting my time to do this?

MS. MALIN: We're not wasting your time, Your Honor.

THE COURT: Yes, you are.

MS. MALIN: No, we're not.

THE COURT: Because you're not -- you're just saying, can you remember, can you remember.

MS. MALIN: She gave me --

THE COURT: And the answer is, I don't know. If you were asking me, I'd say, I don't know. Now let's go with her, if you're asking her.

MS. MALIN: Your Honor, Your Honor --

THE COURT: Uh-huh.

MS. MALIN: -- all the discovery I was allowed to do was get bank transcripts from the Hudson Valley Federal Credit Union which you said were enough. Those bank transcripts do not disclose -- and Mr. Bauer can do it on his -- and I will then cross her on it --

THE COURT: Okay.

MS. MALIN: -- they don't disclose anything but payments for her luxury items such as going out, such as buying clothes, such as doing that.

THE COURT: Okay. Then --

MS. MALIN: It doesn't say what her oil -- she has not given me an oil bill. She could not give me a cable bill.

THE COURT: Okay. Then go by one-by-one. Go one-by-one.

MS. MALIN: She couldn't give me an electric bill --

THE COURT: -- and I'll do the math.

MS. MALIN: That's fine.

THE COURT: Okay. So we got a mortgage. Is that what you're going to ask her first?

MS. MALIN: Yes.

THE COURT: Okay.

BY MS. MALIN:

Q How much did you pay towards the mortgage, ma'am?

A I believe the --

THE COURT: Excuse me. Ms. Malin, are you going to ask for total, or what she paid?

MS. MALIN: Just how much she asked -- she paid.

THE COURT: Okay.

MS. MALIN: At this point. Because we --

THE COURT: All right.

BY MS. MALIN:

Q How much did you pay towards the mortgage?

A From that time period, October --

Q To April.

A I believe I was about $850.

Q And do you know how much the total mortgage payment was?
A Well, I -- double that, so 1,700.
Q Okay. And how much would you have been paying towards the electric bill?
A It varied month-to-month, but I estimated approximately 150.
Q And that's what you paid?
A Well, that's why I paid the Direct TV bill and he didn't, because that was $150.
Q So --

THE COURT: Okay.

BY MS. MALIN:

Q The simple was, did you pay the electric bill or not?
A Well, I did, but by means of paying a whole other bill that he didn't contribute to. That's kind of what we did.

THE COURT: We can't -- we're not trying to play a game. Did you pay the electric bill? Did you write a check for the electric bill?

THE WITNESS: No, I did not.

THE COURT: Thank you. That's the answer we want. No, she didn't. Now, then.

MS. MALIN: Thank you.

THE COURT: So there was nothing paid by you on the electric bill. Okay.

BY MS. MALIN:

Q Was there anything paid by you for the water and sewer?
A There is no water and sewer.
Q Okay. Was there anything paid for you (sic) for telephone, telephone bill?
A No.
Q You didn't pay? Okay.
A We -- well, cell phone, if you mean cell phone. Home phone, we didn't have one.
THE COURT: A telephone is a telephone. Nobody's trying to be cute. Did you pay for a telephone? And if you had a cell phone, the answer is --
THE WITNESS: Yes.
THE COURT: -- yes.
BY MS. MALIN:
Q And how much did you pay for that?
A Approximately $200 a month.
Q And was that payment -- did that include a cell phone for anyone else, or just you?
A My daughters.
Q Being the twins?
A Yes.
Q Okay. So just for the record purposes, you have only two daughters?
A No. I have two sons, but they didn't live with me.
Q But you only have two daughters?

A Yes.
Q Okay. And how much do you believe you paid for food on a monthly basis?
A I really don't know.
Q But you did -- is it fair to say that you paid the total monthly food bill?
A I would say I paid the majority because I had more mouths to feed.
Q Okay. And do you have any idea what you paid for it?
A No.
Q Do you have laundry and dry cleaning expenses?
A Not laundry. Dry cleaning on occasion.
Q And about how much is that on a monthly basis?
A I don't recollect.
Q How about medical and dental expenses?
A On a monthly basis for you and your kids, your two daughters? I'm sorry.
THE COURT: Call it the twins. It makes it simpler for everybody.
MS. MALIN: The twins. I'm sorry. You're right.
THE WITNESS: Specifically, is that insurance that I paid, or is that just
THE COURT: All of it.
THE WITNESS: -- out of pocket.
THE COURT: All of it. If you're paying insurance,

did you pay the insurance out of your own pocket?

THE WITNESS: It came out of my pay, directly out of my pay.

THE COURT: Okay. That's paying it.

THE WITNESS: Again, I would have to look at numbers to add that up because the insurance came out of my pay, and then I have no idea with co-pays to the dentist what it came to, or prescriptions.

THE COURT: Okay. Let me ask you a question, then, on medical. Did you make all the medical bill payments for yourself and your twins?

THE WITNESS: Yes, I did.

THE COURT: Including all the co-pays?

THE WITNESS: Yes, I did.

MS. MALIN: I'd like to just put down for Exhibit -- Plaintiff's Exhibit 1 and again, it's multiple pages, so I don't know if it's better to approach her and let her look at it quick, or --

THE COURT: No --

MS. MALIN: -- if you want me to go through page by page --

THE COURT: -- reduce it down so we can all see it. Okay. And then move it off to your -- there you go. Okay. Now, what is the first on here? Ms. Fraleigh, tell me what the first one is. You're going too far.

MS. MALIN: I just can't -- it's just not all visible, that's why I didn't want them not to be able to see part of it.

THE WITNESS: It's a pay stub of mine.

THE COURT: Those are your pay stubs?

THE WITNESS: Yes.

BY MS. MALIN:

Q Can you tell us the date?

A No. I could tell you the pay period. The date's not on it.

Q Okay. Is the pay period on it?

A Yes, it is.

Q Can you look through these and tell me if these were the six months prior to the filing of the petition?

MS. MALIN: Could I hand them to her, Your Honor? I just think it would be easier for her to look at the dates and just tell us the period it covers.

THE COURT: Okay.

THE WITNESS: Well, I -- you don't have to because three, four and five pay periods -- we get paid biweekly -- should be, if my calculation is right, in the beginning of the year.

BY MS. MALIN:

Q Well, I'd just like to give them to you if you would just --

THE COURT: Do a quick look and then hand them back to her.

BY MS. MALIN:

Q That's the period that we --

THE COURT: And it's October the 30th through April the 30th that we're talking about here?

MS. MALIN: That period, I believe, is the period.

THE COURT: That's my question to you.

MS. MALIN: Yes, I believe that's the period. I just want her to --

THE WITNESS: Well, you gave me duplicates here?

BY MS. MALIN:

Q Those are the paychecks you gave me. So just -- if you could just identify a period for me there, if it covers the --

A Identify a period?

Q Take out the duplicates and set them to the side. Take the ones that are non-duplicates, put them in a pile, and just look and see if you can identify a period of time that those paychecks cover.

A I can only estimate without a calendar because I don't -- our pay periods change. Like I said, it's the end of 2009, beginning --

THE COURT: But you know good and well that January is going to be one/two, February is going to be three and --

THE WITNESS: Our pay periods, sometimes, Your Honor, December, the last week in December and the first week in

January might be the same.

THE COURT: Yeah, I know. Okay.

THE WITNESS: So that's what I'm saying. I can't be specific --

THE COURT: Would that be one, or would that be twelve?

THE WITNESS: It depends on the year.

THE COURT: Not twelve. It would be twenty-six.

THE WITNESS: Twenty-six. Twenty-six, yeah. It depends on the year.

BY MS. MALIN:

Q So read each date that those checks cover on the checks.

THE COURT: They're not there.

THE WITNESS: They're not there. This is pay periods. That's why without a postal calendar --

BY MS. MALIN:

Q So just state the pay periods for the record. That's all I want her to do. You know, whatever they are, just state them.

A I'm just trying to put them in order.

THE COURT: Thank you. That would help me, too, because when you looked at it, it had '10 first instead of '09.

THE WITNESS: Ms. Malin, let me caution you to stay close to the microphone.

MS. MALIN: Oh, okay. I'm sorry.

THE WITNESS: Okay. We have Pay Period 20-09, Pay

Period 21-09, Pay Period 22-09, Pay Period 26-09, Pay Period one of ten, two of ten, three of '10. Wait, I think I skipped a page. I'm sorry. Pay Period 23 of '9, 24 of '9, 25 of '9.

THE COURT: Then you have 26 you've already said one, two, three --

THE WITNESS: Right. One, two, three, four and five of '10, and six of '10.

THE COURT: Okay.

BY MS. MALIN:

Q Do any of those cover the period of October 2009 through April 30th, 2010?

A I'm sure some of these. It could possibly be all of these fall within that time period.

Q Okay.

THE COURT: Now, you can -- Ms. Malin, you can get them back

MS. MALIN: Yeah. Can you -- well, I just want her to look at them.

BY MS. MALIN:

Q Can you just tell us from that what you believe you were paying for insurance? Because you said it was directly taken out of your check.

THE COURT: She can do that from looking at it, as we all can look at it.

MS. MALIN: Okay.

THE COURT: Right. It all gives us the benefit of -- all gives us the benefit of looking at it together.

MS. MALIN: Okay.

BY MS. MALIN:

Q Can you -- I'm sorry. Can you see that, Ms. Fraleigh?

A Can you increase it just a bit? Just a little bit, because I can't read the --

Q Better? Or --

THE COURT: That's much better.

THE WITNESS: Okay.

THE COURT: All right. I can see it well. Can you see it?

THE WITNESS: Yeah.

THE COURT: Okay. That's good.

BY MS. MALIN:

Q Can you tell us what your monthly insurance costs were from that paycheck, ma'am? Sorry.

A I can tell you pretty much.

Q Okay.

A The main healthcare is H.P. 112. It was fifty-three ninety-five per pay period.

THE COURT: Okay. Hold on just a second. What line number -- gross, the net, or -- okay. Details are -- and this is gross the net that you're looking at, the --

THE WITNESS: Right. Right.

THE COURT: Okay. Ms. Malin, you take your pen and you've got gross, federal tax, state tax, retire, Medicare. What's -- then keep going down and tell us which one to stop at.

THE WITNESS: It's the third-to-last one on your left there, H.P. 112.

MS. MALIN: See my -- where my --

THE COURT: That's M.P. Is that an H?

THE WITNESS: That's an H.

THE COURT: Okay.

MS. MALIN: Looks like an H --

THE COURT: That's it.

THE WITNESS: All right. Well, it's supposed to be an H.

MS. MALIN: Okay.

THE COURT: So that one is the one we're talking about, and that's your --

THE WITNESS: Well, that's part of it.

THE COURT: -- health insurance?

THE WITNESS: Right. That's my -- that's the primary health insurance.

THE COURT: And that's for you and the twins?

THE WITNESS: Correct. Fifty-three ninety-five a pay period.

THE COURT: And the pay period is biweekly?

THE WITNESS: Biweekly.

THE COURT: Okay.

MR. BAUER: I just want to object as to the relevance of this. I don't know how this shows contributions of Mr. Sekul to the household.

THE COURT: We're going to get there. I'm going to let -- Mr. Bauer, I'm letting some foundation be laid here. Okay.

THE WITNESS: Okay. And then the -- above that by two lines, FDV-D --

THE COURT: Uh-huh.

THE WITNESS: -- that's dental.

THE COURT: Okay.

THE WITNESS: And that's 55.93 --

THE COURT: Again, biweekly?

THE WITNESS: Pay period, yes, biweekly.

THE COURT: And then the $4? Is that something else?

THE WITNESS: Well, that was mine only. That's extra vision.

THE COURT: Oh, but that's yours?

THE WITNESS: That's just mine, not -- not theirs. Did you want that, too?

THE COURT: Yeah. This is your expense.

THE WITNESS: Right. And that one is $4.

BY MS. MALIN:

Q   Total insurance, yours and the kids?
A   Right.
Q   Nothing else?
A   Well, this is healthcare, right?
THE COURT: Right.
THE WITNESS: Not any other insurance.
THE COURT: And this is just the insurance healthcare. It's not -- it doesn't have anything to do with co-pays or anything like that?
THE WITNESS: No. That's just -- just the one that came out automatically.
THE COURT: Okay.
BY MS. MALIN:
Q   Okay. So we have -- you also said that you paid all co-pays on just the girls, I assume, the twins, correct?
A   I paid the co-pays on myself, too.
Q   What about your sons? You said you had two sons. Were you paying any insurance for them, or any co-pays for them, medical co-pays?
A   In that six-month period?
Q   Uh-huh.
A   I have to -- I'm not -- I'd have to say no. I don't know, because I don't know when Obama's law changed. My sons were out of the age bracket, and then it changed to 26.
THE COURT: It wasn't then.

THE WITNESS: Okay.

BY MS. MALIN:

Q Okay.

A So I don't know. Andy was still nineteen at the time.

Q Okay. Did you get reimbursement from any source for those co-pays? For example, did a third party contribute to those co-pays?

A Sometimes.

Q And who was that?

A My ex-husband.

Q Okay. In the period, the six months prior to the filing, had he contributed anything?

A I don't recall.

Q As of the date of the filing, was he contributing, April 30th, as of the date of the --

A For co-pays?

Q Uh-huh.

A I really -- I don't recall.

Q And what did you say the average of those co-pays were? Did you know?

A I didn't know.

Q Okay. I'm going to show you what's been marked as Exhibit 29.

MS. MALIN: And, again, I just think she needs to look through this to see if she can identify it for the record.

It's multi pages. Unless counsel wants to consent to the fact that this is the bankruptcy petition that was filed with the court.

MR. BAUER: I -- as long as Ms. Malin says this is the petition that was filed with the court, I will trust that this in fact is.

THE COURT: I'll take judicial notice of it.

BY MS. MALIN:

Q Do you know what date that you filed your bankruptcy petition, ma'am?

A I believe it was in April of 2010.

Q So then we're dealing with the -- this -- as of the date of the filing --

THE COURT: If you'll reduce it down just a bit?

MS. MALIN: This is actually really kind of neat.

THE COURT: Okay. And you have the ECF header there. So it is a document taken from ECF, Electronic Case File. Yeah.

MS. MALIN: Let me just go and start --

BY MS. MALIN:

Q Do you recall signing this bankruptcy petition and schedules?

A Yes, I remember signing.

Q Okay. Do you recall reviewing it, the petition and schedules? Do you recall reviewing the petition and schedules?

Again, I'm really not trying to trick you. I'm just asking questions. Did you review the document before you signed it?

A Yes.

Q Okay. When was that?

A Did I sign it or review it?

Q That you reviewed it.

THE COURT: Didn't you review and sign the same day?

THE WITNESS: Well, I was given it to review on my own. So I'm not sure prior to when I signed it when I exactly reviewed it

BY MS. MALIN:

Q So your -- did someone prepare it for you?

A Yes, my attorney.

Q And your attorney is?

A Was Brian Juran.

THE COURT: Ma'am, I'm just going to caution you. There's no reason to be argumentative.

THE WITNESS: I'm not. I'm just trying to be specific because in -- okay. All right. All right. I've been deposed by her --

THE COURT: I understand. But you're not in front of her now. You're in front of me.

THE WITNESS: Well, I'm trying to be accurate. That's all.

THE COURT: Okay.

BY MS. MALIN:

Q So just -- did you go to Mr. Juran's office and he gave you the petition to go home and review?

A I believe so.

MR. BAUER: Objection, Your Honor, ambiguous. I don't understand the question here --

MS. MALIN: I just need to know if she signed it --

THE COURT: It's a really simple question, Mr. Bauer. I'm going to overrule the objection. It's a very simple question. Were you handed the petition, allowed to go home, read it, and bring it back?

THE WITNESS: I believe so.

THE COURT: Okay.

BY MS. MALIN:

Q When did you actually sign it?

A April -- whenever it says next to April -- the end of April. Sometime in April. I don't have it specifically --

THE COURT: It's not a trick question. Show her. It shows there that you signed it on April 28th.

THE WITNESS: April --

MS. MALIN: I'm just making sure that's when she signed it, Your Honor. Lots of debtors don't sign the petition the dates that they're put on --

THE COURT: I understand. But they don't know that, either. You --

MS. MALIN: But she knows when she signed it --

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: I agree. I will sustain it.

MS. MALIN: I'm just trying to get her -- listen, part of the -- part of this objection is and what you've ruled on is that under 727(a)(4) we have to make sure that her schedules are accurate. All I'm asking is, did you review it, do you -- did you understand it at the time, was it true and accurate. That's all I'm trying to get out here. It is not --

THE COURT: And that's all she's been saying back. I don't know.

MS. MALIN: No, she said she -- she doesn't know if she signed it, she doesn't know where she signed it. I'm just asking.

MR. BAUER: The issue that's --

MS. MALIN: I mean, come on.

MR. BAUER: Your Honor, the issue that's in front of the Court is the contributions of Mr. Sekul and whether or not --

MS. MALIN: They were fraudulently left off the petition.

THE COURT: She -- Ms. Malin is correct. The falsity of the statement is an element that Ms. Malin is trying to prove, and she is correct in trying to prove it.

BY MS. MALIN:

Q When you signed the petition, did you understand what you were signing?

A To the best of my knowledge, yes.

Q Did you believe it to be truthful and accurate?

A Yes, I did.

Q And you took how much time to review it?

A I have no idea. However long it took me to go through page by page.

Q More than five minutes you think?

A Probably.

Q Okay. So you fully understood the document before you signed it?

A To the best of my knowledge I did.

MR. BAUER: Objection. Calls for speculation. She's not an attorney --

THE COURT: It is not speculation. It's a direct question. You are overruled, Mr. Bauer.

BY MS. MALIN:

Q Were you aware when you signed it that you signed it under oath with penalty of perjury?

A Yes.

Q And I'm showing you now the declaration concerning the debtor's schedules, which is the declaration under penalty of perjury by the individual debtor. Did you sign that?

A I believe so, yes.

Q Do you know? You just believe? You're not sure?
A Well, you're showing me -- it doesn't have my signature, but, yes, I would -- yes, I signed something like that.
Q Now, I'm directing your attention to statement of financial affairs. Does that appear to be accurate for your income in the years of 2010, 2009 and 2008?
A No. I believe the first one is inaccurate.
Q The 2010?
A Uh-huh.
Q The 150,000?
A Uh-huh.
Q What were you making at the time?
A Probably more like 50,000. So it must be a typo.
Q Okay. Now I'll direct your attention to Schedule J.
THE COURT: I think that's I.
BY MS. MALIN:
Q Oh, I'm sorry. Schedule I. Can you see okay?
A Uh-huh.
Q Okay. Do you remember reviewing this schedule?
A Yes.
Q Who calculated the numbers that were set forth in this schedule?
A I believe my attorney.
Q And how -- what did he use to base those numbers on? What documents had you provided him to enable him to calculate that

number?

A Pay stubs, whatever he had asked me for at the time.

Q Would that have been the pay stub that I showed you, Plaintiff's Exhibit 1?

A I'm not sure because of the pay period, you know what I mean?

Q No --

A However many pay stubs he said I needed to have to file, I --

MR. BAUER: Objection, calls for speculation. If she didn't prepare it, how would she know what pay stubs were --

THE COURT: She knows what she gave him.

MR. BAUER: She knows what she gave him --

THE COURT: Overruled. All she's doing is saying what she gave.

BY MS. MALIN:

Q Did you give him six months worth of paycheck stubs?

A I believe that's what he asked for, yes.

Q I know he may -- that may have been what he asked for. I'm asking you what you gave him.

A I believe I gave him that.

Q Does this accurately reflect to the best of your recollection what your monthly gross income is, this 4,481.46?

A At the time, yes.

Q Okay. And it represents to the best of your knowledge the

payroll taxes and social security that were being deducted?
A Yes.
Q It says here, "See detailed attachment." So I'm going to turn to that. Can you tell me what Retire 8 is?
A It goes into the federal retirement system.
Q Okay. And that's, what, 31.66 a month?

THE COURT: Are you FERS?

THE WITNESS: Yes.

BY MS. MALIN:
Q That's 31.66 a month?
A I think it varies based on what you make per pay period.
Q Okay. But, I mean, this is a monthly calculation is what I'm asking you, if you know?
A I'm not sure.
Q Okay. And what's UNW?
A That's a --
Q The next line?
A -- union wage, you know, deduction.
Q Okay. And UNH? Is that union -- UNH?
A Yes, because I belong to two unions.
Q Okay. IN 325?
A I think that might be the life insurance.
Q Okay. VBP?
A Those are voluntary benefits. That's through the union. That's my disability insurance and I'm trying to think what

else. I think it's just my disability insurance at that time.
Q Okay. So you pay $851 a month for disability insurance?
A No, 60.98

THE COURT: No, $60 and ninety-eight.

BY MS. MALIN:
Q Oh, I'm sorry. I'm on the wrong -- let's do it this way. Sorry. TSPLG?
A That's my thrift savings plan loan. I had a loan against my thrift savings plan.
Q Okay. And the payment is $851 a month?
A It is.
Q Okay. What was that taken for?
A It was taken to pay debt at the time.
Q What debt?
A Whatever debt I had.
Q Did it have anything to do with the household debt?
A No.
Q And what's FDV-D?
A That's the federal vision and dental.
Q Okay. And then the HP-112, that correlates back to the paycheck, right, the health?
A Right. And so did the federal dental and vision.
Q Uh-huh. And the TSPO5?
A That's what I contributed to my thrift savings plan, five percent.

Q Okay. So that was a -- that's a retirement savings for you?
A Yes.
Q It's not a payment of a loan?
A No. That's the retirement savings.
Q Okay. Now we'll go to Schedule J. You can see that okay?
A Yes, I can.
THE COURT: Excuse me. Go back to the other page for just a second, please. The TSP loan, that's a -- that's a non-secured loan? That's an unsecured debt? You didn't have a house at the time you took that loan?
THE WITNESS: No, no. No, that's just -- that's my money that I borrow.
THE COURT: Okay. That's all I wanted
BY MS. MALIN:
Q And you continue to pay that back?
THE COURT: You have to, I think.
MS. MALIN: No, it's only a -- if you -- if you fail to pay a loan, what happens it's just declared income in that year. There is absolutely no requirement to repay.
THE WITNESS: No.
MR. BAUER: Objection. Calls for speculation --
THE COURT: No, no, no. That's between me and her and that has nothing to do with the case.
MR. BAUER: All right.

MS. MALIN: Do you need to -- I'm sorry. Do you need to --

MR. BAUER: Sometimes it's mandatory, so you have -- while you're working, it's mandatory.

THE COURT: Unless you take it -- she's right. Unless you take it as income.

THE WITNESS: Not --

MR. BAUER: I've been told --

THE WITNESS: If I can clarify --

MR. BAUER: -- that if you take it as income, you better leave and you're fired.

THE WITNESS: I can clarify --

MS. MALIN: Talk about speculation.

MR. BAUER: Well, being a CPA --

THE COURT: We're just talking.

MR. BAUER: I'm just talking, too. So --

THE COURT: I know. And he's just talking.

BY MS. MALIN:

Q All right. So --

THE COURT: I'm the one that got everybody sidetracked. I was just curious.

MS. MALIN: That's okay. Do you need that schedule anymore?

THE COURT: No, I'm finished.

BY MS. MALIN:

Q Schedule J. Where it says rent or home mortgage, the 840, that's the half of the mortgage you've been paying?
A Yes.
Q Okay. It says here that it does not include real estate or property insurance. Was not the property insurance and the real estate taxes included in the mortgage?
A It was.
MR. BAUER: Objection, Your Honor. She pays rent. Rent won't include taxes and insurance.
MS. MALIN: Is he testifying, Your Honor? I object to that.
THE COURT: Mr. Bauer, I can assess what's been said. I will overrule your objection.
BY MS. MALIN:
Q It says here electricity and heating fuel 225. Now, how much of that was electricity? You said about 150?
A That was my guesstimate. These are -- these are all taking monthly figures. I'm trying to approximate.
Q Okay. But you're not paying that 150, that guesstimate, right? You testified you were not paying the electric bill. Is that correct?
A Correct.
Q Okay. So that really is 225 less 150?
A Well, I paid -- I paid my portion of the electric by paying another bill is what I explained before. But I --

Q But this says electric. I mean, I'm just asking --

THE COURT: It says electric and heating fuel. Read the whole thing.

MS. MALIN: Right.

THE COURT: Is that your share of the heating fuel, or is that partially your electric?

THE WITNESS: It was partially electric and heating.

THE COURT: Okay.

BY MS. MALIN:

Q All right. Now, it says here water and sewer $35.

A That was yearly.

Q But you said there was no water and sewer.

A But what they included in that had to do with the septic pumpout every year for sewage. We didn't know how else to declare that since that was my responsibility.

Q So how much did the sewer pumpout cost, septic tank?

A It was around $300, give or take.

Q So you divided 300 by twelve to get that number?

A I believe that's what they did, yes.

Q Well, they did it? Who would be "they"?

A I gave my lawyer the numbers and the receipts and whatever other information, and they came up with these numbers.

Q So you gave the lawyer the septic receipt?

A I believe so.

Q And what other receipts did you give him, actual receipts

of bills did you give him?
A I don't recall exactly, but that's how the numbers came up. He asked information and I came forth with it.
Q Okay. Just -- just try and clarify for me. You said you gave him receipts. He or they calculated the numbers of your monthly bills. All I'm asking you is what receipts you gave him. Can I assume that you gave him receipts for your clothing, your laundry, your medical, your transportation, your recreation?
A No.
Q Okay. So tell me what? Because now you know that those weren't given. Do you know which ones were?
A I'm not sure at this point. I don't remember what ones I gave and what ones I didn't. Some -- some they ask a question and you to the best of your knowledge answer how much you think you spend on this.
THE COURT: Okay. Well, go back to the water and sewer. You say that was based on when you were responsible for the entire septic --
THE WITNESS: Well, getting it pumped out once a year.
THE COURT: -- and so you just -- and so you, since you're responsible for it, put that down as sewer?
THE WITNESS: Right.
THE COURT: Okay.
THE WITNESS: Well, I didn't put it down as sewer. I

told him this is what I paid, and they said, well, we could put it under sewer.

THE COURT: Okay.

BY MS. MALIN:

Q Again, who's "they"?

A Brian Juran.

Q Did you meet with anybody else at Brian Juran's office?

A Did I --

Q Meet with anyone else --

A His secretary. But I didn't meet with her. I dropped stuff off to her. I talked to her on the phone to get an appointment. I met with him.

Q Who actually put together the petition?

A I don't know.

MR. BAUER: Objection. Calls for speculation.

MS. MALIN: She might know, Your Honor. I'm just asking does she know.

THE COURT: Mr. Bauer, I'm going to overrule. It's a legitimate question. If she doesn't know the answer, she answered properly, she said, I don't know.

MR. BAUER: Thank you, Your Honor.

BY MS. MALIN:

Q How did you come to the conclusion that you were spending $550 a month on food?

A By looking back over my bank statements or my receipts that

I had around that time.

Q Well, I believe that Mr. Bauer has your bank statements. Would you like to look through them and tell me where that is, if that's what was on there? Let me get them. I don't have the marked copies.

MS. MALIN: If I could have the marked copies of her bank statements that she testified that show her expenses, if that would help her, Your Honor.

THE WITNESS: You can look -- if you have my Sam's Club, I spent a lot of money at Sam's Club on groceries, so --

MS. MALIN: Well, you said they'll be in your expenses. So let's look at it.

MR. BAUER: Objection. If plaintiff's counsel wants to go one-by-one through these, that's fine. Let's make a record. But if she's asking the debtor to pull things from two years ago, I'm having trouble with that.

THE COURT: I am, too, because she answered --

MR. BAUER: So let's make a record and go through one-by-one.

THE COURT: -- I don't disagree with Mr. Bauer to a certain extent because you've changed your testimony, and I know you can trip up somebody. But she said from her receipts that she had and the bank statements. So --

MS. MALIN: I just wanted to look at the bank -- I mean, just, for instance, Your Honor --

THE COURT: Okay. All right. Go ahead. Go ahead. We're listening. I'm going to overrule you, Mr. Bauer, until we see.

MS. MALIN: With their trial exhibits, they have clean, definite easy-to-read bank statements.

THE COURT: Okay.

MS. MALIN: For me, they only had transcripts and they told me they didn't have bank statements. I mean, I'm in a -- if you look back on the documents that were put on this record, and one of my causes of action in here was that they didn't give me completed bank statements so that they were legible and easily -- so I could glean the information from them, they gave me transcripts. And they gave me transcripts like this, all out of order and all out of place. And she testified at that 2004 exam that she did not have actual bank statements.

THE COURT: Sit down, Mr. Bauer.

MS. MALIN: And, yet, here they are. Here they are, all her bank statements --

MR. BAUER: Your Honor --

MS. MALIN: -- nice and clean for Mr. Bauer.

MR. BAUER: Your Honor --

THE COURT: Yes, sir?

MR. BAUER: -- if I may, the statements Ms. Malin has she was given. I personally put them together in order, delivered them directly to her office. When she --

MS. MALIN: Were they these?

MR. BAUER: -- had them for the 2004 exam it was a mess. So I'm having trouble with what Ms. Malin is saying here. I'm having a lot of trouble with this.

MS. MALIN: They weren't these. These Ms. Fraleigh said --

THE COURT: She me what you -- show me what you got.

MS. MALIN: I didn't bring those because it's not part of it, but they are on the record. And if I could -- give me five minutes to go to the clerk's office, I'll show you. This was not it. She testified directly that she did not have these.

MR. BAUER: Your Honor, this is exactly what was given --

MS. MALIN: And this whole thing --

MR. BAUER: -- to Ms. Malin --

MS. MALIN: No, it is not what was given to me. Mr. Bauer, you know that was not what was given to me.

THE COURT: Ms. Fraleigh, you can step down. And you can go get a drink of water.

MR. BAUER: Your Honor, I am really having a serious problem with Ms. Malin's --

MS. MALIN: I can call Mr. -- I can call Mr. Rufo (phonetic) to the stand --

THE COURT: No. No, no, no.

MS. MALIN: -- he can tell you that's not what I got.

MR. BAUER: It's self-serving, Your Honor.

THE COURT: That's --

MS. MALIN: Self-serving?

THE COURT: Ms. Malin --

MS. MALIN: Is he kidding me?

THE COURT: -- you didn't bring those to the Court, then.

MS. MALIN: They're in the court record and you said you would take judicial notice of everything in that court record and you're right, I didn't create a copy of everything in the record. This record is a mess. And when we were doing the trial stip, you said you would take notice of everything on that record. And those transcripts are on that record. And I can tell you they are not these.

MR. BAUER: Your Honor, if she has a problem --

MS. MALIN: I am embarrassed for him that he would give me this at this time.

THE COURT: Ms. Malin --

MS. MALIN: And then to sit there and say that I --

THE COURT: Excuse me. Time out. Both of you. I want to know if you had a copy of all the defendant's exhibits before this trial today.

MS. MALIN: I had a copy --

THE COURT: And this -- this is a defendant exhibit, correct?

MS. MALIN: Hold on, let me look.

MR. BAUER: Your Honor, this is the --

THE COURT: Mr. Bauer --

MR. BAUER: -- same one I've handed up to the --

THE COURT: No, no, no, no, Mr. Bauer. When I said we were going to trial --

MS. MALIN: Let me go through --

THE COURT: -- I want to see that if these were handed to Ms. Malin as a trial exhibit before today.

MR. BAUER: Yes. Yes.

MS. MALIN: He did hand them to me before today.

THE COURT: But when did he hand them to you?

MS. MALIN: I think that it was -- I have them, so I assume it was at the hearing. But here's the point, Your Honor.

THE COURT: That's not the point. I said give trial exhibits. You had them before today.

MS. MALIN: I --

THE COURT: Ms. Malin, you had them before today.

MS. MALIN: I'm not arguing that. What I'm arguing is that it's very convenient how no one remembers everything, how what documents I've got, and I was stopped from doing any further discovery, so I couldn't even ask her questions about these that I got the day -- a couple of days before trial. And if you think that that's fair --

MR. BAUER: Your Honor --

THE COURT: Excuse me. Ms. Malin -- Ms. Malin, wait a minute. A couple of days before trial? When were you given defendant's exhibits?

MS. MALIN: We had this maybe two weeks before the trial.

THE COURT: Okay. Not a couple of days; that's two weeks. Make the record correct.

MS. MALIN: I couldn't -- but maybe two weeks. But I could not ask questions -- I was deprived of the opportunity to ask questions about these particular exhibits because they were not provided me pursuant to a request I made from that witness prior to at a 2004 examination. The scheduling order expired.

THE COURT: Okay. So -- all right. I've heard -- sit down. I've heard that

Now, what do you want to ask on these statements?

MS. MALIN: I want her to go through them and I want her to identify the expenses for the Court that she's saying that she was paying as of April 30th. And the only reason not to do that is because they're not in there appropriately, or there's something to hide. I mean, I have not been allowed to ask one single question here to make a -- to make any type of a record. I couldn't even appeal this --

THE COURT: Enough. You can appeal it. Go ahead.

What?

MR. BAUER: Your Honor, my intent is to go through the bank statements and cancelled checks that Ms. Malin has had since the 2004 --

MS. MALIN: But he's objecting to me doing it?

THE COURT: Ms. Malin, stand over there and let him talk. When he's finished talking, you can talk.

MS. MALIN: Fine.

MR. BAUER: Perhaps if I could do that at this time it would help the Court and the situation. Ms. Malin is asking for the debtor to pull numbers out of her head. I think it's more appropriate that we go through the bank statements to make the record clear.

MS. MALIN: These bank statements -- I'm asking her to pull numbers off the bank statements.

MR. BAUER: Ms. Malin has had -- and --

MS. MALIN: Same thing he wants to do.

MR. BAUER: -- discovery ended back in June, and she's had still further --

THE COURT: Enough. I've had enough.

MR. BAUER: -- if she did have an issue --

MS. MALIN: I have, too.

MR. BAUER: -- with documents I've delivered, I've never known about it until today. And if she -- again, if she did have a problem, why wasn't there something brought to the

Court's attention before today?

THE COURT: Okay. I still want to know what you're trying to show with the bank statements.

MS. MALIN: I'm trying --

THE COURT: No. Go to what our issue is today.

MS. MALIN: Okay.

THE COURT: Contribution by Mr. Sekul. What are you trying to show?

MS. MALIN: Well, the contribution by Mr. Sekul, as we have heard today, is one-half the household expenses. I am trying to demonstrate what the expenses were. Now we know that she pays one-half of the expenses. That's what she testified. So she's going to go through here, tell us the household expenses she paid, how much they were. Now I know that if I add -- times two, that's how much Mr. Sekul contributed, which goes directly to the means test as to what his contribution -- because we all know there's one. Now we've got it.

THE COURT: Okay.

MS. MALIN: Now we've got it. And I've gotten an opportunity to --

THE COURT: I don't think we've got it, but that's okay.

MS. MALIN: Okay. That's a decision for you to make, not a fact for me not to be able to discover.

THE COURT: Okay, Mr. Bauer.

MR. BAUER: I think what the Court's going to see if we go through the bank statements and the cancelled checks is that Ms. Fraleigh basically paid for everything. And she had -- and hold on. She had cash advances.

MS. MALIN: No doubt, but she said half.

MR. BAUER: If I may have the floor for a moment?

MS. MALIN: He's testifying against what she --

THE COURT: Ms. Malin, sit down. I've had enough from both of you over-talking the other one. He is speaking; shut up. When she speaks, shut up.

MR. BAUER: Yes, Your Honor --

THE COURT: Now, then, we're listening to Mr. Bauer. Take a step back. Now, then.

MR. BAUER: What the bank records will show is that Ms. Fraleigh basically paid for everything. With respect to the water and sewer, it's sewer charges, and this was testified to --

THE COURT: Okay. We've got that. All right. So what are you trying to tell me?

MR. BAUER: With respect to heating and electric, Ms. Fraleigh has taken cash advances from her credit cards --

THE COURT: Okay. I --

MR. BAUER: -- as --

THE COURT: That's not what I --

MR. BAUER: -- has indirectly --

THE COURT: You're testifying. I don't need you testifying.

MR. BAUER: I'm just saying what's going to happen if I can --

THE COURT: Okay. We'll get there.

MR. BAUER: -- the bank records before Ms. Malin --

THE COURT: All right. But what we're not going to do is ambush a witness. The reason we're not going to ambush a witness is that's not what you do at trial. If you didn't have it at the 2004, you have it now. You're right. Give her a copy of the bank statements.

MR. BAUER: She has a copy, Your Honor. It's the same copy the Court has --

THE COURT: Mr. Bauer --

THE COURT: Your Honor, she --

THE COURT: -- I said give Ms. Fraleigh a copy of the bank statements, not Ms. Malin. Now, then, Ms. Malin, you're going to give Ms. Fraleigh a copy of the bank statements. You're then going to put another copy of the bank statements on the thing. She's going to be able to go through the ones she said she's done.

MS. MALIN: I'm going to need his copy. I only have mine.

THE COURT: Well, we have the Court's copy. Give him the Court's copy. Where's the Court copy.

MR. BAUER: That's mine. Your copy is right here.

MS. MALIN: Oh, I have a copy.

THE COURT: I have a copy.

MS. MALIN: It's his Exhibit A is here.

THE COURT: We'll get you a copy.

Now, then, it may take all day. We're doing it all day long. Ms. Fraleigh, I hope you got a good drink of water. Okay. Go back on the witness stand. We're going to go -- here, just tell me which one it is because Ms. Malin is going to put it at -- you're going to give her the original -- one of them, not the -- one of them, and then you're going to put it on the thing. We're all going to look at the same time.

(Witness resumes stand.)

THE COURT: Nobody's trying to trick you. All we're trying to do is get down to what you paid. And what we're trying to get to is how much you paid in your expenses.

MS. MALIN: I just -- Your Honor, if we could just identify for the record, this is Exhibit A --

THE COURT: Defendant's Exhibit --

MS. MALIN: -- Defendant's Exhibit A.

BY MS. MALIN:

Q Can you just look at it? You have the copies there. And just tell us what, for the record, it is?

A Bank statements from Hudson Valley Federal Credit Union.

Q And from whose account at Hudson Valley Federal Credit Union?
A From my account.
Q Is this account held with anyone else?
THE COURT: Does anyone else sign on this account?
THE WITNESS: Well, I'm just looking at exactly what she has here. There -- if it's got all my statements, then it has two loans that Chris Sekul is on with me. So --
BY MS. MALIN:
Q But they're just reflected here. He's not a holder of this account, correct? He's not on this account with you? This is your --
A Not on my savings and checking. He's on the loans.
Q Okay. So is this the savings and checking account statements, yours?
A And the loans are on there. Everything is on here.
Q I get the loans are on there. I'm just asking a question. Are these --
THE COURT: Could he take -- could he take money out of your account?
THE WITNESS: Not my savings and checking.
THE COURT: Okay. That's all we needed to know.
THE WITNESS: Okay.
MS. MALIN: Okay. At this point in time, Your Honor, I guess I would move these into evidence as the debtor's actual

checking and savings account statements --

THE COURT: Any objection?

MR. BAUER: No objection, Your Honor.

THE COURT: They're in.

(Defendant's Exhibit A in evidence.)

BY MS. MALIN:

Q But your testimony basically we're trying to get, as the judge said, is what your monthly expenses are. And you had stated that you had given Brian Juran documents that you -- documents you had reviewed to get these monthly statements. So what I'm going to ask you to do is to go through each one of these one of these with us and identify for us each monthly statement, on each monthly statement what the expenses are for the household going out.

So we're now on statement period 10/1/2009 to statement period 10/31/09. Now, I would assume right up here at this summary, these are the total number of checks written out. Is that correct?

A Yes

Q And then the total of thirty-nine other debits. Could you explain to us what that is?

A My ATM card.

Q So those would be withdrawals off the ATM?

A Correct.

Q And this is total of deposits. Can you -- that's deposits

that you made into the bank?
A Correct.
Q And where would your deposits have come from?
A I have no idea at this time.
Q Well, what did you normally deposit into this account? What source did the deposits come from?
A Either checks from family, for birthdays or checks from my ex-husband. They came for his portion of a co-pay.
Q Any money from Mr. Sekul?
A Did I get --
Q Would you deposit into this account any monies that you would have received from Mr. Sekul in the period --
A In my checking account?
Q In this account, ma'am.
MR. BAUER: Objection, Your Honor. Can we just go through one-by-one and make this a clear record? Because, again, we're trying to pull --
THE COURT: I think she is.
MS. MALIN: Yeah.
MR. BAUER: All right.
THE WITNESS: I'm sorry.
MR. BAUER: It would just be easier to make a compilation and go through every number.
THE COURT: Well, she is. So I will overrule the objection.

MR. BAUER: Understood.
BY MS. MALIN:
Q What would be the source of your deposits in the accounts? You said family checks, gifts. Would there be any money from Mr. Sekul --
A Mr. Fraleigh.
Q Mr. Fraleigh?
A Not usually. I don't have any, you know, recollection of that.
Q Okay. It says here, total of five other credits. What's a credit?
THE COURT: I think that's your salary just so you know.
THE WITNESS: Oh. Yeah, I guess.
THE COURT: Let me help with this.
THE WITNESS: I would assume it's my salary that goes in automatically.
BY MS. MALIN:
Q Your paychecks are deposited automatically in this account?
A It is.
Q Do they continue today to be deposited automatically in this account?
A No.
Q Okay. So going through the first statement, you see the dates 10/1, 10/2? You see amounts 225, 736. Can you just go

through and identify what expenses were paid out of this account on this day -- in this pay period?

A   The online payment I would assume is a credit card payment.

Q   But you don't know that. Is that correct?

A   By what it just says there, I -- no, I can't say definitively.

Q   Okay. So can you point to anything definitively here that would reflect a payment for a household bill?

A   Food.

Q   And where is that, ma'am? Point out to it, please.

A   These three -- there are four --

THE COURT: What's the date? Use the date.

THE WITNESS: Okay.

MR. BAUER: Your Honor, if I may, the debtor and I went through and prepared a --

THE COURT: You're going to get to do it again.

MR. BAUER: All right. I just -- I was hoping not to waste any more time.

THE COURT: You're not going to waste time. We're looking at it.

THE WITNESS: On 10/5, 10/5, 10/7, again on 10/8, that was all food.

BY MS. MALIN:

Q   And how do you know that's food?

A   Because I believe that's the gas station I got food at a couple times. It must have been on my way to work. Sam's Club was food, or household --

Q Okay. So the food you bought at the gas station was to bring home for your family?

A Bread, milk.

Q Okay.

A I'm assuming.

Q And how about Panera Bread?

A Panera --

Q It's a restaurant. You said that that was for groceries, for food for the household. Did you guys go out that -- I mean --

A Possibly.

Q So you're not really sure that that was for household use. Is that correct?

A Well, if I'm feeding myself and -- or myself and my kids, is that not for the household? Or just what I'm bringing home?

Q What you were bringing home into the household.

THE COURT: Answer to the best of your -- answering to the best of your knowledge. Feeding her and your family should be the household. Just answer to the best of your knowledge.

THE WITNESS: Then it's household.

BY MS. MALIN:

Q Okay. Then we go to 10/1/09 to 10/31/09. It's the next page.

A Do you want me to finish this page?
Q It starts with 10/14. Oh, I'm sorry. I thought you were finished.
A Well, you --
Q Go ahead.
A I'm supposed to be looking on household, correct?
Q Correct.
A So my credit cards are or are not household?
THE COURT: They could be.
BY MS. MALIN:
Q Well, it depends. Did you purchase something with your credit card for the household at that time? Because keeping in mind now you just put this into some perspective because I know you're having trouble with it. You have $115,000 worth of credit card debt. So at this point in time --
A So that's why I'm wanting it clarified --
Q -- you're repaying credit cards, correct?
A I'm not just repaying credit cards because I --
Q They're allowing you to continue to use them?
A I believe on the next page, which might be part of the other credits, I had an advance -- advance on the ready-cash loan. So that also would be a credit when it's my account.
Q And you took an advance on the ready-cash loan?
A Well, I believe we could probably find it someplace else, that I probably -- what I was doing was taking cash advances

from my credit cards.
Q Again, I'd just ask you if you remember. Now, you said you took a four-thousand-dollar advance on 10/15.
A Can I explain?
Q Well, I don't want her --
THE COURT: What you need to do is answer yes or no and then explain.
BY MS. MALIN:
Q Do you know for certain that's what you were doing? Because you keep saying, I think that's what I was doing, I know that's kind of what I was doing --
A Yes.
Q So you know this for certain?
A That --
Q That's what happened?
A I took an advance in money that I had put in there.
Q The money you put in where, ma'am?
A To the ready-cash loan.
Q So you put money into a ready-cash loan?
A I put a check for my credit card company that they sent, and I deposited it in my ready-cash loan.
Q Okay.
A And then I withdrew some of that money out of there.
Q Okay. And could you -- that's fine. And is that what you're referring to on one of these statements? And just show

me where it is.
A On Page 2.
Q Okay. And can you identify it for us? Point it to us.
A On the 15th it says there was a four-thousand-dollar credit --
THE COURT: Advance?
THE WITNESS: Oh, advance, right. It came from the loan.
BY MS. MALIN:
Q Okay.
MR. BAUER: Your Honor, can I help with this transaction? It would really speed things up.
MS. MALIN: Your Honor, he cannot testify to this.
MR. BAUER: I'm not testifying --
MS. MALIN: He needs to --
MR. BAUER: -- I'm just trying to --
MS. MALIN: He needs to object --
MR. BAUER: -- show what the statements show --
THE COURT: You'll have her -- you'll have her later.
MS. MALIN: And he can clarify on cross.
THE COURT: You'll clarify it all.
BY MS. MALIN:
Q Okay. So you took a cash advance of 4,000 and that's a deposit in here. Okay.
But can you show me where on this particular page other

household expenses were paid?
A Can I just refer back to the previous page first?
THE COURT: Sure. Of course you can.
THE WITNESS: On 10/7 and 10/13, there was checks written out, but I have no idea from this what they were written out for.
THE COURT: Okay.
THE WITNESS: So --
BY MS. MALIN:
Q Okay. That's fine.
A That very well could be household expenses.
THE COURT: That's fine. Don't worry about it.
BY MS. MALIN:
Q Okay. I'd just ask that you --
MR. BAUER: Your Honor, we have Exhibit B here which are all of the checks.
THE COURT: You will do it. You will do it on your turn.
THE WITNESS: On 1014, CVS, that was probably a prescription.
BY MS. MALIN:
Q Okay.
A Again, food, Panera Bread, Syberios (phonetic) is a grocery mart. Household, tires, Mavis Tire.
Q Okay.

A Household is household. My car, considered household expense. It looks like an oil change from the price. There's a check written for $440 which I, without seeing it, have no idea what it was written for. Kohls, I presume is clothes or just -- actually, that looks like an online payment to my credit card.

Q Who's your oil provider?

A It's not oil.

Q Fuel oil.

A It's not oil. It's gas.

Q I'm sorry. Who's your fuel -- your gas provider?

A I believe now the name is Freedom that was there at the time.

Q Back at that time?

A I believe. It changed names. I'm not sure. I think it's Freedom.

Q At that -- at the time that these accounts were maintained it was Freedom?

A I don't know if that was before or after. It changed.

Q Okay. Do you know what it was during the period of time that these accounts cover, these accounts --

A No, I don't know when it changed.

Q I know you don't know when it changed. Do you know the name of the company? You pay the fuel oil bill -- or, excuse me, the gas bill --

A No.

Q -- do you know who you're paying it to?

A No, I didn't -- I didn't pay it. Chris paid that. So I don't know who he -- he wrote a check or paid in cash, that part of it. I have no idea.

Q Okay. So when your petition on Schedule J said that you were paying electric and fuel oil, or fuel, you weren't paying either electric or fuel, Chris was paying electric and fuel. He was making the actual payments to the electric and the --

A He was making the actual payments, writing the check, paying the companies, correct.

Q And you weren't paying those bills. You were paying other bills. That's your testimony? That equaled the bills he was paying.

A To a degree, yes. But I also paid by taking cash advances, and that's how I would --

Q I'm not asking you how you paid. Just what we're trying to -- all I'm trying to establish again is what your monthly household expenses were. What did you use to put together your Schedule J on your bankruptcy petition so we can just get to the bottom of what your monthly expenses were. You've testified that your monthly expenses -- you paid half of the household expenses, Mr. Sekul paid the other half. I just want to know, is your half reflected on Schedule J, and what your half is?

A   Yeah. To the best of my knowledge it's reflected as accurate as it possibly could be.
Q   And you relied upon what to get those numbers?
A   My lawyer at the time.
THE COURT: Excuse me. Let me ask you the question.
The lawyer couldn't make the numbers up out of his head. How did you give the numbers to your lawyer?
THE WITNESS: I -- some of them, like I said, I had actual -- like the Direct TV and the garbage, I had actual, because I was responsible for those. They were in my name.
THE COURT: Okay.
THE WITNESS: But things that varied, like the electric bill varies, that was in Chris's name, and he usually paid the gas thing. That was me most of the time taking cash advances and then giving him money towards that if it didn't balance out.
THE COURT: Okay.
THE WITNESS: It wasn't just a cut-and-dry number every month.
THE COURT: All right. I understand what you did. Ms. Malin will have more questions, but I understand what you did.
BY MS. MALIN:
Q   Okay. Did --
A   Are we still going through this, or we're --

Q Well, I'm asking the questions. Did Mr. Sekul give Mr. Juran any of his -- copies of any of his bills?
A No.
Q The bills that he was paying?
A No.
Q Did he provide any documentation to Mr. Juran?
A No.
Q Did Mr. Juran ask him for any?
A No.
Q You were present when Mr. Sekul testified that you, he and Mr. Juran met together and discussed your bankruptcy?
A Yes, I was present.
Q Do you remember what it is that you guys discussed?
A I do not.
Q How many times did you meet with Mr. Juran?
A Three, maybe four. I'm not sure of the exact number.
Q How many times did Mr. Sekul come with you?
A Once.
Q Did Mr. Juran, to the best of your knowledge, ask Mr. Sekul how much he was making?
A I don't recall what was discussed with Mr. Sekul. As far as I recollect, it was just about me.
Q Okay. So going back to Schedule J, the expenditures, you have clothing of $145 a month. Is that correct?
A Yes.

Q Can you go through the records, these statements, these bank statements and demonstrate for me where you show your clothing expenses for the year, or for the period of time that this covers so that we can determine how you got to the 145? Because I would assume this is what you used, correct?
A Probably looking at my credit card statements more than this to see, because that's what I would pay for the clothing on. So --
Q So you didn't -- okay. So then all of these expenses on your Schedule J would not be found in your bank statements necessarily?
A Well, indirectly, because the credit cards were paid.
Q Out of just this account?
A I believe so.
Q Okay. So we have the medical and dental expenses of $100?
A Uh-huh.
Q So, on average, you're spending $1,200 a month on unreimbursed expenses?
A Approximately.
Q Okay. Does anybody in your household suffer from any particular medical disorders or anything that requires special medications?
A I don't recall back then at that time if anybody did or did not.
Q You don't recall whether or not your daughters had any

medical issues they had to address back then?
A In that six-month period specifically, I don't remember.
Q How about as of the date of the filing of the petition when you went and gave your bills to Mr. Juran? Do you remember whether anybody in the household was suffering from any type of, you know, a necessity to have monthly medications or monthly doctor visits or maybe braces on their teeth?
A I don't recall.
Q Do you know whether or not you had any medical needs at that time that required monthly payments out of $100 -- more than 100 that were required, uncovered expenses of $100 a month?
A Not that I recall, no.
Q Okay. You have recreation, clubs and entertainment, $150 a month. What does that include?
A Going to the movies, buying a newspaper, buying magazines for the girls.
Q Okay. That would just be the monthly --
A Renting a movie. I --
Q Would that be with you and Mr. Sekul as well?
A Possibly. I --
Q Well, did you -- did you guys engage in recreational things on -- you know, together as a household, you, he and your daughters?
A Sometimes, yes.

Q How about you and he?
A Sometimes, yes.
Q Okay. So the average half expense of that would be approximately 150 a month? You said you spent half of all your expenses and he put in the other half.
A Well, I think for recreation and that, it would be primarily myself and my daughters.
Q Okay. So the recreation that you guys engaged in with Mr. Sekul you didn't pay for?
A Sometimes I might have paid and sometimes he might have paid.
Q Okay. And now you have charitable contributions of $100 a month. Who were those being made to?
A I'd have to -- I don't think there was on my pay, if there was a designation. I used to give right out of my pay.
Q Okay. But at that time, I mean, (indiscernible), do you remember what charities you would contribute to? I mean, it's $1,200 a year. You have any recollection?
A Church, whatever they're, you know -- I don't know.
MR. BAUER: $20 a month is $200 a year, right?
MS. MALIN: Charitable contributions --
THE COURT: Is $100. It's $10, a little --
MS. MALIN: I'm sorry. Maybe I'm off on the --
MR. BAUER: It is --
MS. MALIN: So recreation is 100.

MR. BAUER: He says $20.
MS. MALIN: Okay. I apologize. So it's $20 a month.
THE COURT: I'm sorry, it's on the wrong line.
MS. MALIN: Yeah. It's hard to see that; I'm sorry.
BY MS. MALIN:
Q $20 a month, so maybe church? What church did you attend?
A Sometimes Pleasant Valley Methodist, sometimes my parents' church.
Q What's your parents' church?
A Communion United Methodist on 376.
Q Okay. Did you put that in cash in the plate or would there be checks that would represent that?
A Cash.
Q Anything else?
A Not that I'm aware.
Q Okay. And this life insurance policy, forty-nine sixty-five, we saw life insurance taken out of your paycheck. Is this a different policy?
A Yes.
Q What policy is that?
A There's a policy that I pay for my children.
Q Is it on their life? It's their life?
A Uh-huh.
Q Okay. And then your auto insurance, that just covers your auto?

A Correct.
Q No other automobiles on your insurance?
A No.
Q And now we have disability insurance. Before we saw you were paying disability insurance out of your paycheck. How is this different?
A This disability insurance, it's like if I'm hospitalized, it pays per day and it's a different company, doesn't come out of my pay. It comes directly out of my account.
Q Okay. So it's a different policy altogether.
A Correct.
Q It's unrelated to your job.
A Paycheck, yep.
Q And education expenses?
A Uh-huh.
Q What's that?
A Stuff I had to buy for my daughter or tests they had to sign up for. They took AP courses in high school so they cost money so --
Q And there was no reimbursement for that from anybody, any third party?
A No.
Q So now is it your testimony, again, just clarification of the record, that these expenses represent one-half of the household expenses that you were responsible for?

A To the best of my knowledge, yes.

Q Okay. So it would be fair for us to assume that the other half was being paid, as you said, by Mr. Sekul.

MR. BAUER: Objection, calls for speculation.

MS. MALIN: She could know that, Your Honor, she lives with him.

THE COURT: I was going to say overruled. It's her household expenses.

THE WITNESS: At the time of the filing, yes.

BY MS. MALIN:

Q Did you continue to live with Mr. Sekul after the filing?

A For awhile, yeah.

Q Just asking. And you heard Mr. Sekul's testimony. He stated that he started to pay for your -- all the household expenses after the filing of the petition. Is that correct?

A Pretty much.

Q Why was that?

A Because my ex-husband had the child support reduced from $215 a week to fifty -- or $66.49 a week so I can no longer keep up with my bills, which is the whole reason I ended up filing bankruptcy when I did. I was already getting to the point where I wasn't being quite responsible, but I had no means any longer, other than my pay, and if you look at my paystub you'll see --

Q But wait a second. Because if you add this up, it's more than two twenty-six a week, right? These expenses that you were paying. You just testified you were paying these expenses at the date of the filing of the petition.

A Correct. And I was borrowing money from my credit cards to basically pay --

Q At the date of the filing of the petition the credit cards --

A No, prior to that.

Q But this is as of the date of the filing of the petition, ma'am.

A Right.

Q This is April 30th, 2010.

A Correct.

THE COURT: Don't argue with the witness, ask questions.

MS. MALIN: I'm sorry. I'm sorry.

THE COURT: Just ask questions.

BY MS. MALIN:

Q Were you paying them or not, ma'am? At the date you filed the petition --

A Was I paying what?

Q -- were you paying these expenses that you have --

A Yes.

Q -- under penalty of perjury said you'd been paying?

A Yes, I was.

Q Okay. Now, you said all of a sudden after the filing $226 was taken away from you and now you can't afford any of these expenses. Explain to me -- you have income coming in on Schedule J of $4,481.46. You have a monthly here of alimony, maintenance and child support of the 246 --

MR. BAUER: Objection to relevance for post-petition.

THE COURT: It is relevant. Another objection would do, such as arguing with the witness, but not relevance. It's relevant. Just simply ask --

MR. BAUER: Objection as to argumentative.

THE COURT: Ask questions.

MS. MALIN: Okay.

BY MS. MALIN:

Q If I take the $246 a month out --

THE COURT: Okay. She's asked and answered that she was taking from her credit cards to pay the bills.

MS. MALIN: Not at the time of the filing of the petition. She said she wasn't doing that anymore, she couldn't, she had no more credit.

THE COURT: It was after. She testified after she filed the petition.

MS. MALIN: Okay. And what I'm asking only is -- okay.

THE COURT: And she no longer had credit. She's testified to that. I've heard that.

MS. MALIN: Okay.

THE COURT: Now, can we not have her repeat things that she's already said.

MS. MALIN: Okay.

THE COURT: She took $4,000 from ready cash in October. She did some other things, so okay.

MS. MALIN: I understand that, Your Honor, and that was the payday expenses, as she stated, up until the date of the filing of the petition. Then she stated she was paying them from other sources; she just stated that. So my question -- and then after the petition is filed, she says Mr. Fraleigh stops paying her the 246 a month and now she can't put any money into the household expenses and Mr. Sekul has been paying all the household expenses and I'm just asking why that is because I don't understand how you lose $246 and now make no contributions to the household. I'm just trying to understand that.

THE COURT: Because she also had no credit, she just filed bankruptcy.

MS. MALIN: She had a paycheck of $4,481 --

THE COURT: Don't argue with me.

MS. MALIN: I'm not.

THE COURT: I've heard the testimony too.

MS. MALIN: But she --

BY MS. MALIN:

Q What were you doing with the -- your -- were you getting a paycheck after the filing?
A If you look -- that, I think --
Q I'm just asking the question, did you get a paycheck after the filing?
A Yes, I did, but that doesn't -- that's not accurate when it says to the amount because that's including the money I earned that went to my loan.
THE COURT: Ms. Fraleigh, Mr. Bauer is going to ask you a lot of questions and I think it will get clarified then and you'll get to talk.
BY MS. MALIN:
Q So let's just assume that --
THE COURT: Not assume. Ask the questions.
BY MS. MALIN:
Q -- we take -- okay. It's $448 -- $4,480 a month. You're still getting that paycheck. Is that accurate at that time?
A Is that gross or net?
Q I don't know. It says there it appears to be gross. I'm asking you.
THE COURT: It's your statement, Ms. Fraleigh, it's not Ms. Malin's statement.
THE WITNESS: Right, but that's -- I believe that would be accurate if that was before the loan came out. I didn't actually receive that much money directly to me.

THE COURT: Just refer back to your paystubs. Do you have them there?

THE WITNESS: No, I no longer have them.

THE COURT: Ms. Malin, how many -- how much longer do you think? I'm not trying to hurry you, I just want to know.

MS. MALIN: I understand. I understand, Your Honor. No more than until three o'clock I don't believe, and probably less than that. I mean, I could speed them up if we could get the answer.

THE COURT: Court's going to take a break.

MS. MALIN: Okay.

(Recess taken.)

(Proceedings resume.)

THE COURT: I said you may be seated.

THE WITNESS: Oh, I'm sorry.

THE COURT: No, you can come up. I didn't know why y'all were both standing.

MS. MALIN: I'm sorry.

BY MS. MALIN:

Q Just to get back on track, what I was asking -- I know I probably asked this before, but the $4,481.46, can you read Line 1 for me and the Court? Can you see where I'm pointing?

A Yes.

Q It says -- can you read it? It's monthly gross wages, salary, commissions.

A   Yes.
THE COURT: Why don't you read it out loud?
THE WITNESS: Oh, you want me to read it out loud?
THE COURT: No, she's got it.
BY MS. MALIN:
Q   No, I just did.
A   Yes.
Q   So would it be fair to state that that's what you believe your monthly gross income to be?
A   Yes.
Q   Now you see the Line No. 4?
A   Yes.
Q   It says less payroll deductions?
A   Yes.
Q   Okay. So those sums, as you can see, total the deductions?
A   Yes.
THE COURT: But you didn't take out insurance and union dues, right?
THE WITNESS: I --
THE COURT: Oh, the detail. Never mind.
THE WITNESS: Yeah.
THE COURT: You go over to the detail. I'm sorry. I apologize.
BY MS. MALIN:
Q   But I mean, that number corresponds to that detail sheet,

correct?
A Yes.
Q Okay. So that does take into account the 851. Remember you were telling about your pension -- excuse me --
A Yes. I misunderstood when -- the gross part of it, yes.
Q Okay. So --
MR. BAUER: Objection as to relevance on the loan payment coming out, how it --
THE COURT: That's all right. We're just finding -- I'm going to --
MS. MALIN: I'm just trying to get --
THE COURT: I'm going to overrule your objection. I'm just listening here.
BY MS. MALIN:
Q Okay. So then total net monthly take-home pay is $2,065.74. Do you see that?
A Yes.
Q So there was a little bit confusion I think as to what was your gross and what was your net. Does that now clarify it in your mind?
A Yes.
Q Okay. Then we see alimony, maintenance, or support payments payable to the debtor and the debtor's use of their dependents listed above.
A Correct.

Q Okay. And that's 246, correct?

THE COURT: Okay. I want to ask a question right here for my own edification. After this, that amount changed?

THE WITNESS: No, that amount had changed prior.

THE COURT: Okay. So that is the lower amount.

THE WITNESS: Right. Right.

THE COURT: Okay. That's all I needed.

BY MS. MALIN:

Q Okay. That 246 represents what -- what support does that represent?

A Sixty-six forty-nine I believe it was per week.

Q From who? I'm sorry.

A Child support from my ex-husband.

THE COURT: Mr. Fraleigh.

THE WITNESS: Correct.

BY MS. MALIN:

Q Right. And we've established that there was contributions from Mr. Sekul of one-half of the expenses. Is there a reason why he's not on that line?

A Because I wouldn't think he should be on that line because I only listed half of the expenses.

Q So you read that line not to include him?

A I don't know. I mean, I didn't put the numbers on here, my lawyer did, so I would think you're asking me to assume something, so.

Q I'm just asking you.
A If they're not there, then I guess they shouldn't be there.
Q Since you put that, why wouldn't you think it would belong there? That's all I'm asking you, why you wouldn't think it should belong there.
A Because --
Q Not your attorney, you. That's all.
A Well, if he didn't put it there, then I would assume that it shouldn't be there. Because he's the lawyer, I went to him.
Q Okay. I'm going to ask you one more time. Is there a reason that -- so the reason why you thought it didn't belong there is because your lawyer didn't put it there?
A He didn't put it there, correct.
Q Did you give him the number?
A Give him what number?
Q Mr. Sekul's contribution number? You said Mr. Sekul paid half of the expenses and he contributed to your --
A I told my lawyer at the time everything about my situation, so.
Q So the answer to that is yes, you did tell him about the contributions made by Sekul to the household?
A I guess. I didn't look at them as contributions to household, I looked at what I paid and what he paid.
Q And you disclosed fully to Mr. Juran exactly what Mr. Sekul was paying into the household?

A   What he paid and what I paid? Correct.
Q   Do you recall what that number was that you gave to Brian Juran?
A   I don't. You would have to be adding up the things we just went over, the household stuff.
Q   Okay. So now after you filed the petition and Mr. Sekul took on all the household expenses, it was -- as you testified because you couldn't afford to pay because you no longer had credit and because your husband -- excuse me, ex-husband was no longer paying the $246 a month. So my question to you would be --
A   No, I think $246 is what he was paying.
Q   I'm sorry, I didn't hear that.
A   Two forty-six a month he paid when it was reduced. He used to pay $215 a week prior.
Q   Okay. So now that you've got this lesser amount, this 246 -- okay. So now that your net take-home is $2,311.74 a month, you can no longer afford to make any household expenses, hence Mr. Sekul has to start making household expenses?
A   Well, I didn't say any, just wasn't paying my half.
Q   Oh, so -- because he had testified that he took over the expenses because you didn't have any money because you were broke.
A   Well, for the most part he did. He didn't have a choice because I didn't have it to pay, but I'm not going to say it

was 100 percent. I mean, it was --
Q I'm going to show you what's been marked as Plaintiff's Exhibit 16.
THE COURT: And this is from the electronic case filing and is part of her petition?
MS. MALIN: Correct. It's a schedule, the Chapter 7 means test file (sic).
THE COURT: Okay.
BY MS. MALIN:
Q Do you want me to go through it slowly so you can see it, so you can identify it? Tell me when you've seen each page.
A Am I looking at something specific or am I just acknowledging that this was mine?
Q Correct. Just acknowledging that you're familiar with the document.
THE COURT: Ms. Malin, did you take it off of the electronic case filing in her case?
MS. MALIN: Yes.
THE COURT: Ms. Fraleigh, we're going to just acknowledge that this is yours.
THE WITNESS: Okay. That's fine by me.
BY MS. MALIN:
Q Did you review it before you signed it?
A Yes.
Q Did you understand it when you reviewed it?

A I believe, to the best of my knowledge, I did.
Q And what were your discussions with regard to this with Mr. Juran, filling this out? What did he tell you about it?
A He just presented the forms that were filled out and asked me to look them over. Other than that, the discussions were primarily done prior to it being filled out.
Q Did he discuss with you that this form required you to write down contributions you were receiving from a third party for the benefit of you or your dependents on a regular basis?
A I don't recall.
Q You don't recall whether or not he discussed that with you?
A No, I don't.
Q Do you recall reading the line on the -- do you recall reading this document?
A I recall seeing it. I don't recall what's actually in it. It's been a couple years now, so.
Q Yeah, but you -- did you prepare with anybody before today for your trial testimony?
A Did I prepare and look over this document? No.
Q You didn't look over this document?
A No.
Q Did you discuss this document at all with your attorney in preparation of this case?
A I don't think so, other than this, you know, these are the form, no.

Q No, no, no. I mean even with Mr. Bauer. I mean, did you discuss or review any of these documents before you came here to testify today in preparation of the case?
A I don't recall if we specifically went over this. I don't recall looking at this page by page and reviewing it again, no.
Q Do you recall discussing regarding contributions that Mr. Sekul was making and the fact that that was an issue?
A That it was an issue? Yes.
Q In the case.
A Yes.
Q Okay. And did you ever recall testifying at the 2004 exam at my office where I directed you to the section where you were supposed to write in contributions of third parties?
A I don't -- I don't remember.
Q But you know you didn't fill it out on this -- that line out on this form. Is that correct?
A If it's not filled out, then yes, I didn't fill it out. I didn't fill this out at all, it was filled out for me.
Q Okay. But bear with me. You go to see Mr. Juran. Mr. Sekul comes with you. Mr. Sekul discloses that he is, in fact, employed, that he does contribute to the household. You disclose to Mr. Brian Juran that you are, in fact, living together and he's helping you support your children. You filed documents with this court that say the same thing. Yet you look at this statement and you look at your petition and

nothing reflects those numbers and you didn't ask Mr. Juran why that was?

MR. BAUER: Objection, calls for facts not in evidence, it's just speculating.

THE COURT: Yeah, I'm not sure where we're going here. I agree. You're asking too many questions on top of everything.

MS. MALIN: Okay. Just trying to bring it to light.

THE COURT: Just one thing at a time.

MS. MALIN: Okay.

THE COURT: I'm going to sustain your objection.

MR. BAUER: Thank you, Your Honor.

BY MS. MALIN:

Q Okay. When you reviewed this document and you didn't see any of Mr. Sekul's income information on it, did you ask your attorney why it wasn't represented on the document?

A No.

Q Can the same be said for the bankruptcy petition and the schedules, that you didn't -- when you didn't see Mr. Sekul's income on there you didn't ask him?

A No.

Q And one more time, because I don't know if I'm just getting confused at this point, Mr. Sekul never gave Mr. Juran any of his financial documentation?

A I -- no.

Q I don't know. Are you saying no or you don't know?
A No.
Q Okay. I'm going to show you what's been marked as Exhibit 30, plaintiff's. Can you identify that for the record for me please?
MR. BAUER: Objection, Your Honor. This is dated post-petition.
THE COURT: It's in her writing, I'm going to let her identify. We're going to -- this is -- if we're going to get any questions about this, this is now, so I'm going to overrule your objection.
THE WITNESS: It's the weekly expense and earning statement that I filed with support court.
BY MS. MALIN:
Q When did you file that with the support court?
A I signed it on July 28th of 2010.
Q Okay. Was this an action that you commenced in the support court?
MR. BAUER: Your Honor, I do believe Social Security Number, if we could just get that redacted.
THE COURT: I thought we had it redacted earlier.
MS. MALIN: No, it's a different one. I'm sorry.
THE COURT: Thank you for seeing it.
MS. MALIN: It was there.
THE COURT: Okay.

THE WITNESS: I really couldn't tell you off the top of my head, I've been in court so much, if this was one he started or I started. I don't want to answer incorrectly.

BY MS. MALIN:

Q Do you have any idea when the cause of action that you submitted this for was commenced?

THE COURT: Okay, I'll -- let me ask some questions on that.

MS. MALIN: Sure.

THE COURT: You said before you filed bankruptcy it had been reduced from 215 a week to two-forty-something a month.

THE WITNESS: Uh-huh.

THE COURT: This is after that. Is this another one that came in to be reduced or increase? If you can just figure out if it's to increase or reduce, then it's you -- then you can tell --

THE WITNESS: I would assume that it was one that he filed to have it reduced more.

THE COURT: Okay. You don't remember filing any yourself. This is one that was filed against you to reduce it more?

THE WITNESS: Right.

THE COURT: Okay.

BY MS. MALIN:

Q And what was your understanding when you filled this document out, what time period did this cover?
A The time period that I -- it was dated.
Q So you thought it only meant for that particular line or --
A At the time that I filled it out. It's a week -- yeah, it's a weekly thing. That's what it says.
Q And where did the numbers come from that you used to fill this out?
A Approximation at the time.
Q I -- did you look at document? Did you look at your checks, your check register, bank statements, anything like that to fill it out?
A Probably my bills and took it from there.
Q Would you have used any of the same information you used to fill out the bankruptcy petition?
A No, because that was prior.
Q So it would just have been the most current bills?
A Correct.
Q And I note down here that it says, all income from other household members, part-time job, rental income, pension, and so on. Did you fill in a number after that?
A Doesn't look like I did.
Q Okay. Did you sign this? Because the signature has been cut off and this is the best copy I was able to get because the courts don't allow us to get these documents. Did you sign

that?

A Looks like my -- part of the signature.

MS. MALIN: Okay. I'd like to move this into evidence.

THE COURT: For what purpose?

MR. BAUER: Objection, Your Honor. Relevance.

THE COURT: Yeah, what's the relevance of it?

MR. BAUER: And again, it's dated post-petition.

THE COURT: It's post-petition. What relevance is it?

MS. MALIN: That's fine, Your Honor, but it goes to a couple of different issues.

THE COURT: Okay.

MS. MALIN: One, the credibility of the witness; two, whether or not her expenses were accurate as of the filing of the petition because although this is post-petition, the expenses have not materially changed except for when she moved out of the house now.

THE COURT: I'll accept it for credibility.

MS. MALIN: Thank you, Your Honor.

THE COURT: It's relevant for credibility.

MS. MALIN: Thank you.

BY MS. MALIN:

Q Then I'm going to show you -- oh, I'm sorry. At the time that this was filled out, were you represented by counsel?

A I'm not sure if that was before or after I had counsel through Support Collection Unit, but I don't know. When I filled it out --

Q Do you remember sitting down with anybody to help you fill this out?

A Like I said, I filled -- there were two I filled out, that one and another one, and I don't know which one I filled out with counsel.

Q Okay. I'm going to show you what's been marked as Exhibit 17. Plaintiff's Exhibit 17. Can you just look at that?

A Uh-huh.

Q Can you identify what that is for the record?

A It's the same thing, weekly expense and earning statement.

Q Okay.

THE COURT: It's just a month later.

MR. BAUER: Your Honor, objection. This is dated post-petition and relevance.

THE COURT: Okay. I've got the other one in for credibility. What changes this one? What's the difference?

MS. MALIN: Well, I think that it serves for credibility purposes as well, Your Honor, because as you might see, now we have Chris Sekul putting in 586 a week to support the debtor, $586 a week to support this debtor at this time and I, you know --

THE COURT: You also see a much bigger payment on a Honda than you did on the one before. You see other expenses.

MS. MALIN: That's not a payment for the Honda, that's the value, ma'am.

THE COURT: Oh, okay.

MS. MALIN: That's assets. If you see if you go down to savings account she has 5,000; that's all assets. So the assets were 1,325, the Honda, it's not worth 500. I'm just -- you know, all of a sudden he's contributing 586. I would assume that we could say that he was contributing 586 a week at the time she --

THE COURT: I wouldn't make that assumption.

MS. MALIN: Okay. But that's the relevance. It goes to her credibility.

MR. BAUER: I still object, Your Honor.

MS. MALIN: Why are the documents different? Again, you have to remember there's the fraud issue here. One -- how the petition she doesn't do it, she's never amended her petition to include it but she's admitted to the Court that it has occurred. She fills out documents around or about the same time.

THE COURT: I don't draw the same conclusions you do there but I --

MS. MALIN: Well, you may not, but I think that that doesn't mean that it doesn't go to relevance and something that could come in as an exhibit and you decide that later.

THE COURT: I'll let it -- it will be admitted for credibility.

MS. MALIN: Thank you, Your Honor.

THE COURT: There's more on here, though and, Mr. Bauer, there's some things on there I want to know about. Unable to pay debt. Do you see that notation?

MR. BAUER: I'm sorry, Your Honor?

THE COURT: There's a notation on there, unable to pay debt.

MR. BAUER: Where is this, Your Honor?

THE COURT: Right there at the bottom of amount, total weekly expenses. Read the note.

MR. BAUER: Okay.

MS. MALIN: But, Your Honor, I do also -- would like to know -- she has here that she has a loan or debt for $20,247.56. What is that? Again, this is post-petition relevant.

THE WITNESS: Where are you looking?

THE COURT: Ms. Fraleigh, it's on the left-hand column.

THE WITNESS: Oh, those are all the credit cards that I'm unable to pay.

THE COURT: Okay.

BY MS. MALIN:

Q Well, why would -- didn't you already file bankruptcy?

A But it wasn't discharged and I didn't know how to put it on there so I was advised to put that on there and the notation. So this was after I had counsel and I had questions. It's not self-explanatory.

The same with putting Chris Sekul on this one. When I asked about it, I was told I should put him on because I couldn't bring Ms. Hartley's income into question in a support issue if I didn't have somebody that I live with and come on the form also, so.

Q But hadn't you already asserted that as of the July date, that Ms. Hartley's income was important in that --

A But I didn't have counsel then.

Q But you asserted it as an issue. Is that not correct?

A That her income? Yes, I did.

Q And why was that? Because she was living in the same household as --

A Because she supports him.

Q Okay. But we -- you know that Mr. Sekul was helping to support you and your kids. Why didn't you then know to put that on here if you knew, not represented by counsel, that her income could be imputed, why would you not think Mr. Sekul's was?

MR. BAUER: Objection again. This is all post-petition, Your Honor.

THE COURT: Sustain. Sustain.

BY MS. MALIN:

Q But then all of a sudden counsel enlightened you and then you found out that there was a 586 contribution on a weekly basis.

MR. BAUER: Objection, Your Honor. Is that a question?

THE COURT: There was not a question, that was argument.

MS. MALIN: I apologize.

THE COURT: Sustained.

BY MS. MALIN:

Q So then counsel helped you figure out the second net worth statement, of which you put $586 a week coming in from Mr. Sekul. How did you calculate that number?

MR. BAUER: Is that a compound question, Your Honor?

THE COURT: Yeah.

MS. MALIN: Well, she testified -- I'm sorry. She testified that counsel told her to put it on there.

THE COURT: Okay. She did testify to that. Now then, ask her a question. What's the question.

MS. MALIN: I apologize.

BY MS. MALIN:

Q How did you calculate the 586?

A I don't recall exactly. I would assume that's all that was left out of his pay. I don't -- I don't really know.

MR. BAUER: Again, objection as to relevance. It's all post-petition, Your Honor.

THE COURT: I understand, and I've heard this.

MS. MALIN: But you know, as you said, you let it in for credibility. It goes to her credibility. She has counsel, he told her to put the number in, but yet no one -- but she can't tell us how counsel calculated that, how she calculated that.

THE COURT: You've heard her testimony. I've heard it too.

MS. MALIN: Okie doke.

BY MS. MALIN:

Q Did -- at the time of the filing of the petition, did you work any overtime at your job?

A Prior to filing?

Q At the time of the filing of the petition, did you work overtime?

A Possibly.

Q You have the checks; take a look.

THE COURT: Does she have the paystubs or do you?

MS. MALIN: No, no, no, I gave them to her.

THE COURT: You have the paystubs up there?

THE WITNESS: Yes.

THE COURT: You get paid to work overtime?

THE WITNESS: Yes.

THE COURT: Federal court doesn't, just so you know.

MS. MALIN: You're salaried, Your Honor.

THE COURT: I need to see what it said.

THE WITNESS: I'd like to leave now. I don't want to hold you up here.

According to these paystubs, yes, I worked some overtime some weeks, and some weeks not.

BY MS. MALIN:

Q How often -- I mean -- let me ask you, do you -- how many weeks a year do you work?

A How many weeks a year?

Q Yeah. Like there's fifty-two weeks. How many vacation weeks --

A I get five weeks vacation and then I get sick time.

MR. BAUER: Objection as to relevance, Your Honor.

MS. MALIN: Just trying to understand how often she works overtime. Just to the income, goes to the schedules, whether or not Schedule J was --

THE COURT: During that six months -- during that six-month period, how many times did you work overtime?

THE WITNESS: It --

THE COURT: No, just take a look at the --

MS. MALIN: Look at the paychecks.

THE COURT: -- paychecks.

(Witness reviews documents.)

THE COURT: And more than likely it's not relevant, but we're asking.

THE WITNESS: Eight different instances at least.

THE COURT: From the six-month period of time. Okay.

THE WITNESS: Well, if this is within that six months, yes.

THE COURT: Well, we're assuming it's close.

BY MS. MALIN:

Q Can you give me how much -- over that period of time, how much overtime you earned?

THE COURT: No, just one of them. Just take a look at one of them and tell us how much you normally would make on an overtime amount. We're not going to sit here and have you add them up.

THE WITNESS: Well, on this one it says I worked five hours and ninety-seven units and I made $221.46.

THE COURT: Okay. That's for a two-week period.

BY MS. MALIN:

Q Okay. So that would be the average overtime you would get.

A It varies.

Q Okay. So could be more, could be less.

A Sometimes there's none, sometimes there's a lot. It depends on --

Q But it would be --

THE COURT: Christmas. It begins -- depends on Christmas.

THE WITNESS: Not anymore.

BY MS. MALIN:

Q But it would be reflected in those paycheck stubs. Am I correct?

A Right.

Q So there wouldn't be anything -- any other document but that document that would reflect overtime?

A Overtime? No.

Q Okay. And can you just tell me how it's marked on there? What does it say to reflect that it's overtime? Is it -- what's the abbreviation on the paycheck?

A O.

Q O?

A Uh-huh. Right before hours where it says "type," O.

MS. MALIN: Okay. Can I just have one second, Your Honor?

THE COURT: Sure.

MS. MALIN: I may be done but I just wanted to check over everything first.

(Pause in proceedings.)

BY MS. MALIN:

Q Prior to the filing of the bankruptcy petition, did you do any research with regard to Chapter 7 or bankruptcy in general?

A No, other than maybe ask a few friends that had filed.

Q Okay. And what specifically would you ask the friends

about it?
A How difficult the process was, who they went to.
Q Did you get referred to Mr. Juran by one of those friends?
A Yes, I did.
THE COURT: I'm sure someone referred you to Ms. Malin, too. That was a joke.
MS. MALIN: There were times, you know.
BY MS. MALIN:
Q Did you ever discuss with Mr. Sekul anything with regard to the filing of the bankruptcy petition before you did it?
A I know we discussed when the child support got reduced that I was going to be in trouble and that I was thinking about it, yeah.
Q So it was the child support that was enabling you to pay your monthly credit card bills?
A It was a large factor in it, yes.
Q And you discussed with Mr. Sekul that you were thinking of filing. Did he give you -- did he make any comment about it, give you any advice? About the filing.
A I don't -- I don't recall.
Q Do you know whether or not he engaged in any research, maybe asked some friends about it or anything on your behalf?
MR. BAUER: Objection, Your Honor. Calls for speculation.
THE COURT: Sustained.

BY MS. MALIN:

Q During the period of October 2009 to April 2010, did you have any other sources of income other than the ones that have been disclosed today, which is your paycheck, the support or whatever it was from Mr. Fraleigh, Mr. Sekul's contributions? Was there anything else coming in?

A Money from parents for Christmastime or other -- that's about it, I think.

Q Did you go to any of your family members for help for your regular monthly expenses during that period of time?

A Not that I recall.

Q Had you in the past?

A No.

MS. MALIN: And, Your Honor, I just have to ask her a couple of questions about Mr. Sekul's business. I know she's going to make the same -- he's going to make the same, but just for the record purposes.

THE COURT: Okay.

MS. MALIN: So I'll ask them slow so he can -- okay.

BY MS. MALIN:

Q Do you know whether the time between October 2009 and April 20th, 2010 that Mr. Sekul's -- where Mr. Sekul got his income from?

MR. BAUER: Objection as to relevance.

THE COURT: Sustained.

BY MS. MALIN:

Q Do you know whether or not Mr. Sekul was operating a business between the period of October 20 -- October 2009 and April of 2010?

MR. BAUER: Objection as to relevance.

THE COURT: Sustained.

BY MS. MALIN:

Q Do you know Corey Madison?

MR. BAUER: Objection as to relevance.

THE COURT: She can answer that.

THE WITNESS: Yes.

BY MS. MALIN:

Q And how do you know Mr. Corey Madison?

A He works with Mr. Sekul.

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Works with him, that's okay. It's going to be the next question you can stand up on. That one's -- that one's overruled.

BY MS. MALIN:

Q Did Mr. Sekul every hire Corey Madison to work with him in his business?

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Sustained.

BY MS. MALIN:

Q Did you or Mr. Sekul pay Mr. Madison to do any work at the house that you were living in together in that period of time, October 2009 to April 2010?

A I can only speak for myself. I did not.

Q And you don't -- did he do any work -- I mean, did you physically see him there doing work?

A Yeah, but I don't know if it was something he was being paid for or not. They're friends.

Q That's not the question. All I asked is did you see him doing --

THE COURT: Yeah, it wasn't about money. This was about --

THE WITNESS: I don't know specifically in that time period. No, I don't know.

MS. MALIN: Okay.

THE COURT: You know he did work at the house at some point, you don't know if he was paid --

THE WITNESS: Correct.

THE COURT: -- and you don't know what the time frame was.

THE WITNESS: Exactly.

THE COURT: Does that answer better for you?

MS. MALIN: That's fine, Your Honor.

BY MS. MALIN:

Q Do you know either Martin or Florence Conroy.

A Do not.

Q Do you know either Harold -- excuse me, I'm sorry, Harold Ehrlich?
A Do not.
Q Do you know Melissa B. Karchmer?
A Do not know her.
Q Do you know either Raymond J. Rivard or Susan C. Rivard?
A Do not know them.
Q Do you know Elizabeth A. Burn?
A No.
Q Do you know Abha -- I'm probably saying that -- Abha S. Swahni (phonetic)?
A No.
Q Do you know either Charles Goldsmith or Margaret Goldsmith?
A No.
Q Do you know Andrew R. Stone?
A Yes.
Q And how do you know Mr. Stone?
A Because he works at the fire department with Chris.
MR. BAUER: Objection as to relevance.
THE COURT: Overruled.
BY MS. MALIN:
Q Do you know whether or not any services were provided by Mr. Sekul to Mr. Stone through his business in the period of October 2009 through April 2010?
MR. BAUER: Objection as to relevance.

THE COURT: Sustained.

MS. MALIN: I think I'm almost done, Your Honor. I just --

THE COURT: It's fine.

MS. MALIN: Oh, that's me breathing.

THE COURT: No, it's me.

MS. MALIN: Oh, okay. Good.

THE COURT: Sometimes I like to see that the microphone is working.

BY MS. MALIN:

Q When you and -- between the time of October 2009 and April 2010, did Mr. Sekul ever just give you cash to help you out with your expenses?

A Not that I recall.

Q So you don't recall any of those instances like Mr. Sekul was speaking about where you were walking out the door and he'd throw you some money or you'd throw him some money?

A Oh, well, that could have very well happened in that instance, you know, five bucks for something to eat, but other than that, I don't recall any amount of money.

Q Okay. But if you need -- did you ask for Mr. Sekul to help you at any period of time during -- with maybe cash to pay an expense at that time? When I say "that time" I mean October '09 --

THE COURT: I'm going to have to ask you to clarify

just a bit --
MS. MALIN: Sure.
THE COURT: -- Ms. Malin, just for even my sake. Because he testified to take some money off the dresser, take some money out of my billfold and do this. You're talking about pay a bill, pay a credit card bill, pay something bigger?
MS. MALIN: I'm sorry, Judge. But to help her to pay her --
THE COURT: Yeah, would you just -- yeah.
MS. MALIN: Sure.
BY MS. MALIN:
Q Did he ever give you -- during the period of October '09 to April 2010 did you ever ask Mr. Sekul --
THE COURT: Don't worry about the last name, it will spell the same way.
MS. MALIN: Just gets in there.
BY MS. MALIN:
Q -- for any additional contribution because you were having a hard time making your payments for your regular monthly expenses?
A No, I did not.
Q How about for your daughters' monthly expenses at that time?
A No.
MS. MALIN: I believe that's all I have, although I'd

like to be able to redirect, just reserve my right to redirect.

THE COURT: Well, let -- yeah, whatever. You may step down.

What else do you have, Ms. Malin?

MS. MALIN: The last witness I would have, and I understand that it's --

THE COURT: It's an impeachment witness, though, right? Mr. Juran? Do you want to call -- do you want to call him now?

MS. MALIN: Well, I don't know if Mr. Bauer has any cross-examination of this --

THE COURT: Well, he's going to, but I just want to know.

MS. MALIN: Yeah, I think that they needed at least a fifteen-minute lead time to get him together.

THE COURT: Mr. Bauer, what are you going to do right now?

You can step down, Ms. Fraleigh.

MR. BAUER: Your Honor, I'd like to just go through some bank statements and checks and complete the record as to what Ms. Fraleigh actually spends per month and clarify this record.

THE COURT: Okay. That's fine. So you're going to do cross then.

MR. BAUER: I will do cross-examination.

THE COURT: Very good. Sit back down. Just leave them.

MS. MALIN: I'll just go collect them --

THE COURT: Oh, go collect them. I'm sure -- no, he's going to be using them, they're exactly --

MR. BAUER: Is Exhibit A up there, the bank statements?

THE WITNESS: Yes.

MS. MALIN: And the paycheck stubs. Do you need the paycheck stubs?

MR. BAUER: No.

(Counsel confer.)

THE COURT: We'll take a fifteen-minute break when time comes. Thank you.

MR. BAUER: Ms. Fraleigh, this is a copy. Let me take this back from you please. I'm going to get the original.

(Counsel confer.)

THE COURT: State your name for the record.

MR. BAUER: Good afternoon, Your Honor. Thomas Bauer, attorney for the debtor defendant.

CROSS-EXAMINATION

BY MR. BAUER:

Q Good afternoon, Ms. Fraleigh. Okay. What I'd like to do is to hand up Exhibit B, if I may.

THE COURT: B?

MR. BAUER: B.

THE COURT: Okay. We have A on the thing and then you're handing her up B, right? Okay.

BY MR. BAUER:

Q You can turn to the second page and third page. Tell me exactly what you see on Exhibit B.

MS. MALIN: Is this Exhibit B, Your Honor?

MR. BAUER: Exhibit B.

THE COURT: I think A.

MS. MALIN: It says A on the --

THE COURT: You've got A sitting up there.

MR. BAUER: I'm sorry.

THE COURT: Can you put B up there? Can you put B up there for us?

MR. BAUER: She has B in her possession right now.

THE COURT: Well, we need it on there so you either need two copies --

MR. BAUER: There's another B. Do you have Exhibit B there?

THE COURT: Here, take mine.

MR. BAUER: Here's B.

THE COURT: Okay. That's what I want. All right.

BY MR. BAUER:

Q Okay. And is this page from the Hudson Valley Federal Credit Union that you see in front of you?

A Yes.
Q Page 1?
A Yes.
Q Okay. And if we look at Page 2, is this a canceled check from your personal account?
A Yes.
Q Okay. And the time frame on this is September of 2009 and if we go to the end, the last page, we're going to look at a check dated July 9th of 2010.
A Yes.
Q All right. So in here we have canceled checks from Hudson Valley Federal Credit Union from your personal account?
A Yes.

MR. BAUER: Okay. At this time I'd like to offer these checks into evidence as Exhibit B.

MS. MALIN: I would object, Your Honor, as I think he needs to go through each check. He went to the first check and the last check.

THE COURT: Yeah, you got to tell us what they are.

MR. BAUER: Okay. Let's go through the checks.

THE COURT: So we're on Exhibit B is what we're looking at. Okay.

MR. BAUER: Yes.

THE COURT: Okay.

BY MR. BAUER:

Q All right. Let's go back to Exhibit A, because we're going to go from Exhibit A to Exhibit B. Let's look at Page 2 of 6, which I believe is the second page of Exhibit A.
THE COURT: Okay. You're on Page 1 I believe. Or is it the second full page?
MR. BAUER: Second full page.
THE COURT: Okay.
BY MR. BAUER:
Q Okay. And we're going to look down here at October 1st. We're going to see a -- it says USC online payment of $225. Ms. Fraleigh, is this a payment to a credit card?
A Yes.
Q Is that correct?
A Yes.
Q Okay. And we're going to see on October 2nd a payroll direct deposit in the amount of $736.41 and that is, in fact, your deposit from payroll, correct?
A Correct.
Q Okay. Now we're going to look at October 5th, a debit purchase from Sam North. This is, in fact, food, correct?
A Correct.
Q October 5th we see a Sam North purchase again of $4.16. This is, in fact, food, correct?
A Correct.
Q October 7th we see a deposit $240. This would have been

some other deposit. I don't know -- I've been unable to identify what that is, but it's something other than payroll. It could be a cash advance, something other than payroll or child support.

A Correct.

Q Okay. October 7th, Sam's Club, we're seeing $87.19. This is food.

A Correct.

MS. MALIN: Your Honor, I object to him testifying. She should tell us what it is.

THE COURT: This is cross-examination, he can lead.

MR. BAUER: Leading the witness, I'm allowed to do that.

MS. MALIN: Just objecting.

THE COURT: He's --

MS. MALIN: He's telling her what it is, Your Honor. There's nothing to state on this that that's exactly what it is.

THE COURT: Cross-examination you can lead the witness.

MR. BAUER: Thank you, Your Honor. This is cross.

THE COURT: And he's leading the witness so I am --

MS. MALIN: Your Honor, he's -- just so I can make a record, he's testifying to the witness. He's telling her what each one of these things is and she's simply saying yes.

There's nothing on this document that demonstrates that that's, in fact, what it is, nor is he showing her any checks. She just testified that she didn't know what any of this stuff was without seeing a check.

THE COURT: Overruled.

MS. MALIN: Thank you.

BY MR. BAUER:

Q Okay. Check No. 1896, this is to a Jason Pavich (phonetic).

THE COURT: Now you can put that up on --

MR. BAUER: I'll put the check up on here.

THE COURT: Okay.

BY MR. BAUER:

Q It's for $65.

MS. MALIN: I don't see the check, Your Honor.

THE COURT: He's going to, give him a minute. Leave that there. Just leave it there and put it on top of it.

MR. BAUER: Put it right on top. Thank you.

THE COURT: Tear off that first page, then you can deal with it better.

MR. BAUER: It says Exhibit A. Could I -- want me to re-mark it or just fold it over?

THE COURT: Just -- yeah, turn it over.

MR. BAUER: Is that all right?

THE COURT: Yes. There. Okay. Now then you're going to show us the check.

BY MR. BAUER:

Q Okay. Here's a check for $65. Ms. Fraleigh, was this check for your daughter for education expenses?

A Yes, it was actually for a team she was on.

Q Okay. Then we have October 8th, Panera Bread and this, in fact, was for food?

A Correct.

Q Okay. Then October 9 --

MS. MALIN: It's not a check, Your Honor. How does she --

THE COURT: It's not a check --

MR. BAUER: It's not a check, it's a --

THE COURT: -- it's a debit.

MR. BAUER: It's a direct debit from the --

MS. MALIN: He's reading her the testimony off of something they've already put together.

THE COURT: Ms. Malin, he's reading from exactly what you read from.

MS. MALIN: He's reading from something else --

THE COURT: Ms. Malin, he's reading from what's on there. He may be reading from something else, but that's what it says there. Overruled, Ms. Malin.

MR. BAUER: Thank you, Your Honor.

THE COURT: It says right there it's Panera Bread.

MS. MALIN: But it doesn't say what it's for. Neither did she know when I asked her what it was for, now she knows because he's telling her.

THE COURT: No, you -- she told you it was food on the first testimony. This is not new. He's only going over what was testified to to begin with.

BY MR. BAUER:

Q Okay. October 9th we have a charge for Shell, $3.82. This was also food, correct?

A That was.

Q Okay. Then we have October 13th, 2009, we have a Discover payment of $60 as credit card payment, correct?

A Yes.

Q Then we have October 13th, we have a check number, 1897.

A Correct.

Q I'll put this up. This is Prudential?

A Correct.

Q Life insurance $335.44. Life insurance, correct?

A Yes.

Q Okay. Then October 14th we have a deposit of $95.

THE COURT: Take it off, let's look at the bank account.

BY MR. BAUER:

Q We have a deposit of $95 on October 14th. This is something other than payroll. It might be a cash advance, but we have not determined what this is, correct?

MS. MALIN: Your Honor, I object on the grounds that this is outside the six-month period because the six-month period would probably run from October 28th to the April 30th, 2010 and that's basically all we're concerned with, so I think he needs to direct it to the October 28th going forward.

MR. BAUER: On the means test you use six months before, which would be all of October through March. Not April, because she's filed in April.

MS. MALIN: It's six months prior to the date of the filing, Your Honor. The filing of the petition is April 30th, so it would be six months prior; that would be October 28th. Just the objection, you can overrule it.

THE COURT: Overrule. This account is going to go to the -- is this account going to go to the 28th of the month?

MR. BAUER: This is going to go for -- we're going to use full six months and I'm going to take an average of six months and show this Court what the expenses are compared to what was on the petition. That's what we're going to show here.

THE COURT: Okay.

MS. MALIN: Then, Your Honor, I'd have to object to that on the grounds that the six months prior to the filing of the petition was not -- basically what she testified is what was put on April 30th, it was what she was incurring on April

30th. This six months has nothing to do with anything because I'll tell you these -- this six months is not what goes on the means test. We went through this.

This means test is the bankruptcy allowable expenses as set forth in United States Bankruptcy Court. It has nothing to do with these actual expenses. So this is wholly --

THE COURT: Do you just want to fast forward one month?

MS. MALIN: It's irrelevant either way.

MR. BAUER: I do want to show Your Honor --

THE COURT: I'll let you just go to the next month if you want to.

MR. BAUER: Well, actually, a couple more lines here and I'm going to show you something very important.

THE COURT: Okay. Overruled.

BY MR. BAUER:

Q All right. So we see on October 14th, we see CVS for $20.96. That is for medical?

A (No verbal response.)

Q Okay. October 15th we see an advance from an L-38 account.

MS. MALIN: I don't see that on here.

THE COURT: I don't either. Are you on the wrong page?

MR. BAUER: I'm sorry.

THE COURT: Yeah. I was going to say, I didn't see the CVS either. Okay.

BY MR. BAUER:

Q We see an advance, $4,000 from an L-38 account. Ms. Fraleigh, this L-38 account is the joint credit line with Mr. Sekul?

A Yes.

Q Okay. Now, I'm just going to skip forward here to Page 5 of 6. And it shows here there's $5,000.

MR. BAUER: I'd like to have Exhibit C brought up to Ms. Fraleigh, Your Honor.

THE COURT: Put it on the thing, we can all see it at the same time.

BY MR. BAUER:

Q This is marked as Defendant's Exhibit C. This says it is a Citibank check to cash, payable $5,000 and, in fact, is going into the L-38 account, a deposit. Is that correct?

A Yes, it is.

Q Okay. So then we're seeing here $5,000 as a payment October 15th. That is the cash advance from your credit card.

A Yes.

Q Is that correct?

A Yes.

Q Okay. Then we see October 15th on this line of credit -- oh, and let me ask, what was the purpose of putting money into this line of credit account?

A It was for expenditures.
Q All right. Was it also for -- there was no hold on these checks where --
MS. MALIN: I object, Your Honor. He's asking a question that was not brought up on direct and she has to testify to that.
THE COURT: She testified to the $4,000. We're now seeing where it comes from.
MS. MALIN: I need you to ask her, not tell her where it comes from. And it's 5,000, Your Honor.
MR. BAUER: There's $4,000 --
THE COURT: The 4,000 was testified on direct and he's saying what the source of the $4,000 was.
MS. MALIN: I think she needs to say it, Your Honor.
THE COURT: It's cross-examination, Ms. Malin. You can lead on cross. Sit down, I've overruled you.
MS. MALIN: All right.
BY MR. BAUER:
Q Is the purpose of putting the money through the line of credit account so you don't have a three-day hold, the monies are available immediately?
A It is.
Q Okay. Now we see on October 15th $4,000 is then transferred to your personal account, correct?
A Correct.

Q All right. So if we go back, we're going to see $4,000 --

THE COURT: Next page.

MR. BAUER: I'm -- thank you, Your Honor.

BY MR. BAUER:

Q -- $4,000 which is from a cash advance, correct?

A Correct.

Q The $1,000 that was left in the line of credit indirectly is now paying for what, Ms. Fraleigh?

A Whatever bills that I need to give Chris payment for.

Q All right. So it could be said that this is money given to Mr. Sekul to pay other house bills that you're not paying directly.

A Correct.

MR. BAUER: Okay. All right. At this time I'd like to offer Exhibit C into evidence, which is the check by AT&T Universal Card/Citibank for $5,000, a cash advance.

THE COURT: Ms. Malin?

MS. MALIN: Can I just at least see it on the --

THE COURT: Sure.

MS. MALIN: -- amount. That Ms. Fraleigh wrote out to herself?

THE COURT: She wrote it out to cash.

MR. BAUER: She wrote it to cash.

THE COURT: She put it in that account.

MS. MALIN: Yeah, that's fine.

THE COURT: Very good. Admitted.

MR. BAUER: Any place you want it in particular, Your Honor?

THE COURT: No, just lay it aside.

MR. BAUER: I'll lay it aside until we need it then.

THE COURT: Right.

BY MR. BAUER:

Q Okay. So $4,000 comes in as a deposit.

MR. BAUER: You really want me to skip to the next month, correct?

THE COURT: Yeah, I --

BY MR. BAUER:

Q Okay. One more thing I want to point out. October 30th on this account we have cash advance on the L-38 account. There's a payment to this account of $3,198.16. I want to show the defendant Exhibit -- Defendant's Exhibit D. This is another check from AT&T Universal Card payable to Hudson Valley Federal Credit Union, again, paid to the L-38 account, the loan account. Is that correct, Ms. Fraleigh?

A Yes, it is.

Q Okay. And as we see here, the total amount of the $3,198.16, of that amount, $3,000 was a cash advance from this AT&T Universal Card.

A Correct.

Q Is that correct?

A Yes, it is.
Q Okay. This money stays in the L-38 account, the loan account, correct?
A Yes.
Q Okay. And could it also be said that this money is being used to pay house bills indirectly?
A Yes.
MS. MALIN: I just have to object to this on the line that I did not ask this on my direct, I did not get that far on the statements. This is all new evidence. He is testifying to what the evidence -- let me finish. He's testifying to what the evidence is. I believe that he cannot do that.
THE COURT: I think on this one she's right. This is not the purpose of cross on this one. You're going to have to -- you're going to have to not lead the witness on the ones that did not come in on direct. So you just need to -- we'll -- I don't know how we do this right.
MR. BAUER: Want me to ask differently?
THE COURT: Yes, exactly.
BY MR. BAUER:
Q Ms. Fraleigh, can you tell me what this check is?
MS. MALIN: Are we going to treat this as now direct and cross, Your Honor?
THE COURT: We're going to have to. I don't know what else to do. Usually you would have had her for the purposes of

crease and he would have had her for lead. I don't know what went on.

MS. MALIN: Well, if he wants to end his cross and just call her as his --

THE COURT: Then have you rested? Have you rested?

MS. MALIN: No, I haven't. That's why I'm suggesting maybe we should have Mr. Juran on. If he's going to go to direct now in his direct case maybe, just to keep the continuity, let's have Mr. Juran testify and then I can rest and he can go back --

MR. BAUER: I'm trying --

THE COURT: I'm trying too.

MR. BAUER: I'm really trying not to prolong this trial.

MS. MALIN: But you --

THE COURT: That's not the point. We got to do it right and I'm trying to do it right. And I want to do it right. I want Ms. Malin resting is what I want.

I'll tell you what we -- let's do. Let's call Mr. Juran, then we're going to have her for the purposes of cross and direct. And then what we may do -- I don't know.

MS. MALIN: I just -- Your Honor --

THE COURT: I know, we need you resting.

MS. MALIN: But if he has questions on cross with regard to what I've already asked her, he really needs to finish them now and then let me finish my case because he may have -- he can't ask --

THE COURT: Ms. Malin, why are we messing up the continuation of the story? Yes, you are.

MS. MALIN: Your Honor, I'm not.

THE COURT: I mean -- yes, you are. Why are we wasting the time when it's going through sequentially what needs to be done? I understand what you say and I'm trying to agree with you to a certain extent. I'm trying to help. I'm doing everything in my power to help.

If he's going to do it -- he can get it all in on direct and it can take us forever. I'm willing to do that.

MS. MALIN: That's what needs -- I mean, I'm not the one who wrote the federal rules, Your Honor.

THE COURT: You're the one who did the direct and --

MS. MALIN: Now he needs to cross on the direct and then we need to go to my -- Mr. Juran and then he needs to come back to his direct case. That's the way it works, Your Honor. And it's -- that's the way that it tells the story.

MR. BAUER: I will follow Your Honor's instructions.

THE COURT: I'll -- we'll -- listen, Ms. Malin is probably -- at this point in time I'll tell you right now Ms. Malin is taking me up. So do it the way she wants to do it.

Turn down the air conditioning, it's hot in here.

MR. BAUER: Thank you, Your Honor. I'm getting warm too.

THE COURT: Just cross on what's been put in front of you, Mr. Bauer.

MR. BAUER: Which includes all the bank statements, Your Honor.

THE COURT: Yep. Sure does. She just didn't ask about how it got there.

MR. BAUER: Right.

THE COURT: You'll have to do that on direct.

BY MR. BAUER:

Q All right. We talked about the case advances.

THE COURT: Well, you only talked about that one cash advance that I saw on direct.

MR. BAUER: On direct.

THE COURT: Yep.

MR. BAUER: On cross.

THE COURT: Well, on direct -- yeah, you're crossing but Ms. Malin had just said that one cash advance is the only one that I know she brought out on direct, right? Did you see another one she brought out on direct?

MR. BAUER: No.

THE COURT: Okay.

MR. BAUER: But she was inquiring as to where the money was coming from --

THE COURT: Right.

MR. BAUER: -- so I thought that would be good for cross. All right. And Your Honor wants me to skip to November, correct?

THE COURT: Well, you know, do your case. Do what you need to do. Ms. Malin has objected. Go to the next one. Go to November.

MR. BAUER: Go to November?

THE COURT: Yeah.

MR. BAUER: I will follow Your Honor's instructions.

THE COURT: Okay.

BY MR. BAUER:

Q Okay. So if we look at November 2nd -- okay. November 2nd we have a purchase at Schwartz & Patten, DDS and this is for medical expenses, Ms. Fraleigh. Is that correct?

A Dental, yes.

Q Okay. And on November 2nd we have a BP purchase at $39.16. That's transportation. Is that correct?

A Yes.

MS. MALIN: I object, Your Honor. He's supposed to ask her what those things are for and she's supposed to be --

THE COURT: This is cross. This is cross-examination, he can lead the witness and he's leading the witness. Overruled.

BY MR. BAUER:

Q November 2nd, 2009 we have Check 1901 to Longsteth (phonetic), okay, $120. Ms. Fraleigh, this is for education expenses?

A Yes.

THE COURT: For the children?

THE WITNESS: Right.

MR. BAUER: For the children.

THE COURT: For the twins.

THE WITNESS: It's actually for Whitney specifically.

BY MR. BAUER:

Q One of the twins?

A Right.

Q Okay. November 3rd we have Lowe's, $46.20. I have this as unknown. Presumably it would just be -- it would be something for the household.

Okay. 11/3 we have Nick Robert's --

A Roberti's.

Q I'm sorry, Roberti's Marine, Kingston, for $46.20. Again, this is unknown. Is that correct?

A Correct.

MS. MALIN: Why are we not seeing the checks, Your Honor?

THE COURT: These aren't checks, this is debit purchase.

MR. BAUER: It's not a check, it's a direct withdrawal from the bank statement, it's listed on the statement.

MS. MALIN: Oh, so you're just going over that. Okay.

BY MR. BAUER:

Q Okay. And 11/5 we see Reverse Soccer Stuff HB, $65 and this is --

THE COURT: Reverse Soccer Stuff?

THE WITNESS: Occasionally I'd have to borrow money from my daughters for something and so when I put "reverse" it would be them -- me paying them back and it went into their account.

BY MR. BAUER:

Q Is this for education, Ms. Fraleigh?

A Yes.

Q Okay. Then we see a UCS payment of $240 and this is for credit card?

A Yes.

Q Okay. 11/6 we see Chase, payment of $462. That's credit card?

A Yes.

Q Then we see Discover payment, $78 for credit card?

A Yes.

Q Then we're seeing Mid-Hudson Medical Group on November 6th for $5. That is for medical and dental?

A Correct.

Q Then we're seeing 11/6 Quest Diagnostics, medical and dental expenses, correct?

THE COURT: Switch the page, we can't see it.
MR. BAUER: I'm sorry. I'm getting ahead of myself here.
THE WITNESS: Correct.
BY MR. BAUER:
Q 11/9, Adam's. This is food, correct?
A Correct.
Q 11/9 Ark Animal Hospital, $25 and I have that marked as unknown so --
THE COURT: You don't have a pet?
THE WITNESS: We have a dog.
BY MR. BAUER:
Q All right. Let's see. DIRECTV $148.06. That is for TV?
A It is.
Q Okay. 11/9 we're seeing a withdrawal, $25. I had that marked as unknown.
A Correct.
Q Do you recall what the withdrawal of cash might have been for?
A Lunches for the girls, maybe.
Q Okay. WFN on 11/10, this is for $62.40. It's a credit card payment, correct?
A Correct.
Q All right. Then we have Tiberio's Red Hook on 11/10. This is for food --

A   Food.
Q   -- $31.71?
A   Correct.
Q   Then we're seeing Bass Shoe on November 12th. This is for clothing, correct?
A   Shoes, yes.
Q   All right. Then we're seeing Check 1905, $80.37 and this is charitable -- excuse me, life insurance. Companion?
A   Yes, life insurance.
Q   Okay. Now we go to 11/13. We have a direct deposit of your payroll of $837.03.
A   Correct.
Q   We're seeing on 11/13 car -- excuse me. It says car insurance, $613. This is a deposit of $613?
THE COURT: Wait, wait, wait. That's a deposit.
BY MR. BAUER:
Q   Yeah, for car insurance.
A   Yeah, that was my daughter's car insurance. They would give me the money, I would put it in the account. They didn't have checks at the time so I would write the check out but they would give me the money because they shared a car so they shared the expenses. They paid --
THE COURT: I don't see a check out for that.
MR. BAUER: I think later on we're going to see it.
THE WITNESS: It's not. It was a deposit -- it was a

deposit in, so it was probably the check right after that, 1907. It could be that one, you'd have to look. Yeah, State Farm.

THE COURT: Okay. We'll get there. All right then.

BY MR. BAUER:

Q All right. And then we see another one right after that car insurance of $733 is a deposit other than payroll.

A Right.

Q Okay. 11 --

THE COURT: Is that -- are both of those from your daughters?

THE WITNESS: Yes.

BY MR. BAUER:

Q All right. So 11/13/2009, cell phone, $245. That's telephone, correct?

A Correct.

THE COURT: It has HB beside it. Is that again for the daughters?

THE WITNESS: No. I don't -- home banking, that's what HB stands for.

THE COURT: Okay.

THE WITNESS: So that means that those things were done from home on the -- online.

THE COURT: Okay.

BY MR. BAUER:

Q 11/13 we see Check No. 1907, State Farm Auto Insurance.

THE COURT: If you'll show us that check.

BY MR. BAUER:

Q This is $4,052.03. That's auto insurance?

A Right.

THE COURT: So that includes the amount that your daughters gave you for their insurance?

THE WITNESS: Yeah, that is their insurance. My insurance was a different company.

THE COURT: Okay.

BY MR. BAUER:

Q All right. Then we see on 11/16 Kohl's in the amount of $15. This is a credit card payment?

A Correct.

Q Then we are seeing on 11/16 Critty Restaurant (phonetic) --

A Yes.

Q -- $12.79. This is food?

A Food, yes.

Q We're seeing on 11/16 Tastebuds. Also food, right? $8.11?

A Correct.

Q Stewart's is next, $4.61 is food, correct?

A Food, correct.

Q Marshall's is next --

THE COURT: Switch the page. Switch the page.

MR. BAUER: Thank you.

BY MR. BAUER:
Q Seeing Marshall's, 11/16 for $49.90. This is for clothing?
A Correct.
Q Then we're seeing EZPass $15, transportation expense?
A Correct.
Q Then we're seeing McDonald's of $7.45. This is food.
A Correct.
Q And we're seeing 11/16 Shell, $40.59. This is transportation?
A Correct.
Q All right. Then we're seeing Adam's next, $71.91. This is food?
A Correct.
Q All right. Check No. 1908, Ulster County Clerk registration, $176.19. This is --
THE COURT: Show it to us.
MR. BAUER: Yep.
BY MR. BAUER:
Q 1908, Ulster County Clerk, this is for transportation costs?
A Correct.
THE COURT: Well --
MR. BAUER: I'm sorry, Your Honor?
THE COURT: -- what do you pay the Ulster County Clerk for transportation?

MR. BAUER: Registration.
THE WITNESS: Registration. Car registration.
THE COURT: You pay those to the state.
THE WITNESS: No. County.
MR. BAUER: I pay mine to Duchess County Clerk's Officer when I go down to DMV to pay it.
THE COURT: I pay mine to the state. They just send it in the mail, you write a check.
MR. BAUER: If you renew by mail I think you can pay right to the state --
THE COURT: Oh, okay. Never mind.
MR. BAUER: -- otherwise when you go to the county clerk's office they want it payable to the county.
THE COURT: Okay.
BY MR. BAUER:
Q Okay. 11/17 we have CVS, $27.45. This is medical?
A Correct.
Q Check No. 1904, Red Hook Central Schools. This is for education expenses?
A Correct.
Q All right. Then we have Burger King, food, $6.04?
A Correct.
Q And we have Quick Chek Corp. food, $40.02.
A Correct.
Q Target is next, $8.27. This is clothing?

A Correct.
Q And we have Stewart's, $5.77, food?
A Correct.
Q Nails Plus is next for $30. This is grooming?
A Correct.
Q I'm seeing RCI Exchange for $59. This would be for recreation?
A Correct.
Q I'm seeing next both RXS HB, 150-dollar deposit.
A Right.
THE COURT: What's that?
THE WITNESS: I'm not sure at this time whose prescription it was.
THE COURT: But it's for the child?
THE WITNESS: Yeah.
THE COURT: Both.
THE WITNESS: Right.
THE COURT: Twins, for the children?
THE WITNESS: Correct.
BY MR. BAUER:
Q All right. Then we see next is Test Kit HB, another twenty-five-dollar deposit?
A Yeah, that was my daughter Corey, she had to pay for her own drug test to get --
Q Walgreen's, 11/23, $48.35 was --

THE COURT: Flip the page.

BY MR. BAUER:

Q -- medical and dental expenses?

A Correct.

Q Shell 11/23, $5.76, food?

A Correct.

Q We're seeing on 11/23 Bass Shoe, $67.80. This is clothing?

A Correct.

Q Next is CVS for $105. This is medical and dental expenses.

A Correct.

Q Back to Bass Shoe now for $76.60. Looks like a return.

A Correct.

Q We'll take that out. Okay. 11/23/09 we have Check 1909 for Freedom. This is for utilities?

A Correct.

Q Then we go to Hanaford is next, $17.14 on 11/24. This is food, $17.14?

A Correct.

Q Wendy's is next, $12.13. This is food?

A Correct.

Q Subway 11/27, $7.57. This is food?

A Correct.

Q Payroll direct deposit comes in next of $766.38?

A Correct.

Q And we're seeing Marshall's return, $49.90 is clothing?

A Correct.
Q Movies --
THE COURT: Check 1910. Check is the next one. After Marshall you got Check No. 1910.
BY MR. BAUER:
Q Movies To Be?
A Movies To Go. It's a rental.
THE COURT: Show it to us. You didn't show it to us. You didn't show us Check No. 1910.
MR. BAUER: I'm -- it's right in front of me here.
THE COURT: Oh, okay. Movies To Go. Okay.
THE WITNESS: Entertainment.
BY MR. BAUER:
Q $6, recreation. Thank you very much.
Okay. Next we have Stop & Shop, 11/28, $35.99. This is food?
A Correct.
Q Then we have Sunoco on 11/30. This is $40.17, transportation?
A Correct.
Q And then we're seeing CJ's Pizza, food, $21.87.
A Correct.
Q Then we're seeing rent, $840.
THE COURT: Switch.
THE WITNESS: Correct.

BY MR. BAUER:

Q Then we're seeing on 11/30 Walmart.

THE COURT: Wait a minute. Wait a minute. Wait a minute.

MR. BAUER: I'm sorry?

THE COURT: Time out. Time out.

MR. BAUER: I'm sorry.

THE COURT: I think you need to move to another bank account.

MR. BAUER: Yes. I'm sorry, Your Honor.

THE COURT: All right. That's not it. Yeah. Keep going.

MR. BAUER: Well, we're still on 11/30. Where is 11/30?

THE COURT: 11/30 might be in the other account.

THE WITNESS: It's right on the top of the second page down.

THE COURT: Oh, there it is. Okay. But you saw rent. You said something -- oh, there's the mortgage payment. Okay.

THE WITNESS: It was transferred versus writing a check.

THE COURT: Okay.

BY MR. BAUER:

Q And then there was another one on here for Walmart, 11/30 was a Walmart for $23?

A Yeah.

THE COURT: Right there? If you go down just a little further.

BY MR. BAUER:

Q $23.75. Here it is, $23.75. That was a purchase and we're -- that is categorized as food?

A Correct.

Q All right. Now let's go to December. Okay. December 1, we get child support of $465.43.

A Correct.

Q And it was a deposit.

A Correct.

Q We see December 1 National Income Insurance, this is life insurance, correct, $46 -- excuse me, $48?

A It was, yeah, hospitalization insurance.

Q Okay. 12/1/2009 we have Check 1906 and it's Griffin for $120 and this is education expenses for the children?

A Correct.

Q All right. Then we are looking at 12/4 was a withdrawal of $40. This might have been for food perhaps?

A Perhaps for the girls' lunches.

Q Okay. 12/4 we see Target of $51.88. This is clothing?

A Correct.

Q Then we're seeing Walmart on 12/4 of $131.03. This is food?

A   Correct.
Q   Morris Rental Group is next for $9.74. This is food?
A   Correct.
Q   Quick Chek --
THE COURT: Rental is food?
THE WITNESS: It says retail.
THE COURT: Oh, Morris Retail. Okay.
MR. BAUER: I need bifocals so I need -- I'm trying to get closer but -- without hitting myself with a microphone.
BY MR. BAUER:
Q   All right. Quick Chek Corp. --
THE COURT: Next page. Next page.
BY MR. BAUER:
Q   -- $40.61. This is food?
A   Food or gas.
Q   All right. Then we have Walgreen's on 12/7. This is medical and dental expenses, $29.14?
A   Correct.
Q   All right. Then we have EZPass of $15. Transportation?
A   Correct.
Q   Okay. Then we have an advance from the L-38 account. This is a deposit of $12.47. I don't know what that is but it's part of --
A   It pulled it because I didn't have enough money to cover so it would automatically withdraw to cover so --

THE COURT: Okay. It's to cover hot checks?

THE WITNESS: Right. Right.

BY MR. BAUER:

Q Okay. All right. Next on 12/9 we have Quick Check Corp., $34.83. This is food. Then we have an advance from L-38 again for $25.73. I'm assuming that --

A Again, the same thing, because I didn't have enough money.

Q So a check doesn't bounce?

A Right.

Q All right. Then we have Alexis Diner for $25.73. That's food?

A Correct.

Q We have 12/10 we have transfer from savings in here for $100. Okay. That's a deposit

Tiberio's on 12/10 we have $39.41. This is food?

A Correct.

Q We have payroll next, direct deposit of $1,026.40. That's -- that would be a deposit.

Next --

THE COURT: It's a paycheck.

THE WITNESS: Paycheck, yes.

BY MR. BAUER:

Q Paycheck, direct deposit. 12/11 we have a withdrawal of $30. This might have been for food perhaps for the children?

A Probably.

Q 12/11/2009 withdrawal $50. That would also be presumably for food?
A Correct.
Q Okay. Walgreen's 12/14, this is $45, medical and dental expenses?
A Correct.
Q Then we have Car Quest, transportation, $18.47?
A Correct.
Q We have Maltz Used Auto Parts, $54.06, is a transportation cost?
A Correct.
Q All right. Then we have Check 1911, Brian Juran. This is for -- excuse me. Max Farm and Garden for $17.29. That was for a pet?
A Dog food.
Q Dog food.
A Correct.
Q Then we have Check No. 1911. This is Brian Juran, $583. This is legal fees I'm assuming for the bankruptcy.
A Correct. His deposit.
Q Then we have next a transfer from savings of $200.
A Correct.
Q As a deposit other than payroll. Okay. Verizon Wireless we have $317.46. This is telephone.
A Correct.

Q Okay. Next is Exxon, transportation cost, $37.59. We have next a --
A Correct.
Q -- Care Credit of $150. This is a deposit other than payroll.
MS. MALIN: Your Honor, I don't see those on this. I'd have to object to items that are not on the exhibit.
THE COURT: Yeah, I was going to say where are we. Where are we?
THE WITNESS: Next page.
MR. BAUER: Oh, I'm sorry.
THE COURT: I'm missing it.
MR. BAUER: We're on --
THE COURT: Next page. Care Credit, which was from home banking, and it was a thing?
MR. BAUER: $150.
THE COURT: Where's that from? Where's that from?
THE WITNESS: It was a -- again, an online --
THE COURT: I know, but where did you get the $150?
THE WITNESS: Care Credit is a credit card.
MR. BAUER: It might have been a cash advance.
BY MR. BAUER:
Q Is that what this is, a cash advance, Care Credit?
A Right. I took it to be able to pay --
Q Okay. So a cash advance from Care Credit credit card into

the account. DIRECTV, 12/16, $148.06. This is TV?
A Correct.
Q 12/16 we had a withdrawal of $40. I presume that is for food for the children.
A Correct.
Q Okay. 12/16 we have a transfer from savings into this account of $200.
Okay. 12/16/2009, West Side Auto. This is transportation expense, $162.19?
A Correct.
Q And we have Old Navy. This is $36.88. This is clothing.
A Right. It was a credit card payment online.
THE COURT: You have an Old Navy credit card?
THE WITNESS: I did.
BY MR. BAUER:
Q I see, it says credit card payment.
THE COURT: So you had a Kohl's and Old Navy. We've seen those so far as far as store credit.
THE WITNESS: Right. Well, they're also --
THE COURT: Marshall's, was that one?
THE WITNESS: No, Victoria's Secret but you can't tell by the thing that that's what it was on here. Plus the major credit cards.
THE COURT: Okay.
BY MR. BAUER:

Q Aqua Jet, $6.42. I have that as unknown, so I don't know what that is. Presumably it's payment to some kind of house expense. Aqua Jet again for eight dollars and --
MS. MALIN: If I might just clarify for the record it says Aqua Jet Pools and Spas.
THE COURT: Yeah, it does, so --
MS. MALIN: Maybe we could get some explanation.
THE WITNESS: Right. It could have been either chemicals for the pool or chemicals for the hot tub. I have no idea.
THE COURT: But you paid them, whatever they are.
THE WITNESS: Right.
THE COURT: Okay. That sounds awful cheap for any chemical.
MR. BAUER: I completely agree.
THE WITNESS: Well, it could have been something else for it. I don't, you know, recall what it was, but --
BY MR. BAUER:
Q Okay. Next on 12/18 we have Health Quest, $25. This is a medical and dental expense?
A Correct.
Q Okay. Then we have Exxon next, $35.55. This is transportation?
A Correct.
Q We have transfer from savings of $10. That's a deposit

other than payroll.

12/21 we have an advance from the L-38 account, $24.91. I presume that was so to avoid bounced check fee.

A Overdraft, yes.

Q Okay. Stewart's is next, $36.46. That is food?

A Correct.

Q Advance from L-38 again for $35.40, presuming not to bounce a check.

A Again. Exactly.

Q All right. Kingston Hospital, $50. This is --

THE COURT: Let me stop there. That's from the L-38 account.

THE WITNESS: Right.

THE COURT: On the other one up there, the Care Credit --

THE WITNESS: Right.

THE COURT: -- these are advances on your wholly-owned credit cards. You don't have a co-sign with any of these credit cards --

THE WITNESS: No.

THE COURT: -- that you're getting these cash advances from?

THE WITNESS: No, not at all.

THE COURT: Okay. Not that -- I'm not talking about the L account, I know that one's different.

THE WITNESS: No.

THE COURT: But the others. Okay.

THE WITNESS: Absolutely not.

BY MR. BAUER:

Q Kingston Hospital 12/21, $50, medical and dental expenses.

A Correct.

Q All right. We have next an advance from the L-38 account, $11.36. I presume that's to not bounce a check.

A Correct.

Q 12/21 Blue Stores in Livingston, food, $14.60.

A Correct.

Q We have next an advance from L-38 of $41.76. Again, that's so you don't bounce a check.

A Correct.

Q Quick Chek Corp., $41.76. This is food.

A Or gas, yes.

THE COURT: Next page.

MR. BAUER: Thank you, Your Honor.

BY MR. BAUER:

Q Okay. 12/21 --

THE COURT: Push it up just a smidgen, would you please?

MR. BAUER: Up, Your Honor?

THE COURT: Yeah, a little more. There you go. Thank you.

BY MR. BAUER:

Q Okay. Next is an advance from the L-38 account, $3.24, presumably not to bounce a check.

THE COURT: But they do that automatically.

THE WITNESS: Right.

THE COURT: Okay. You don't -- okay.

THE WITNESS: No, I didn't.

THE COURT: All right.

BY MR. BAUER:

Q 12/21 Red Box DVD rental, $3.24. This is recreation.

A Right.

Q Okay. 12/21/2009 deposit, $38.10. This is other than -- this is other than payroll or child support.

A Right.

Q 12/22 Christmas shopping, $500 was put into this account marked for Christmas shopping.

A Correct.

THE COURT: Where did that come from?

THE WITNESS: My sister.

BY MR. BAUER:

Q Next, 12/22, this is Red Box DVD rental, $3.24, again is recreation.

A Correct.

Q Correct? Okay. 12/22/2009, overdraw payback of $136.67. I presume this is --

A I paid back the cash loan from all the withdrawals that came out that made it so I didn't overdraft.
Q Right. Okay. 12/22 we have a withdrawal of $270. I have this marked as unknown.
A Christmas shopping probably.
Q Christmas shopping, okay. 12/22, this is Target, $29.45. This is clothing.
A Correct.
Q Child support now is coming in, $307.45.
A Correct.
Q On 12/23 we have Sheer Cleaners, $35.
A Dry cleaning.
Q Dry cleaning. Thank you. Blue Stores in Livingston, $15.79. This is food?
A Correct.
Q We have payroll direct deposit of $859.21. That's a deposit in the account.
A Correct.
Q You have Blue Stores in Livingston on 12/26 of $14.24. This is food?
A Correct.
Q Maltz Used Auto Parts, $27.03. This is transportation?
A Correct.
Q Next is BP, $42.57, transportation?
A Correct.

Q CVS on 12/26, $26.20. This is medical and dental expenses?
A Correct.
Q All right. Then we have Check No. 1916. Is that the next page?
THE COURT: Did you switch the page for us?
MR. BAUER: Sorry, Your Honor. Sometimes the bank puts them out of order and I'm just trying to --
THE COURT: That's fine.
MR. BAUER: -- locate it.
THE COURT: We're at December the 31st? Is that where we are?
MR. BAUER: I'm at December 28, Check No. 1916 for rent of $840.
THE COURT: Yeah, you're -- okay. So you're a little ahead of us.
MR. BAUER: Up top here.
THE COURT: Oh, I'm sorry, I missed it.
MR. BAUER: -- the way it splits. That's rent. I'm just looking for 1916.
THE COURT: The check? Okay.
MR. BAUER: I'm not finding the check here so I --
THE COURT: Do you recall this check?
BY MR. BAUER:
Q The amount was $840. Do you know any amount that you would have paid for $840?

A   Yeah, for half the mortgage payment.
Q   All right. So that could be rent. Okay.
    All right. 12/28 we have Quick Chek Corp. for $38.42. This is food?
A   Correct.
Q   12/29 Blue Stores in Livingston, $10.21 is food.
A   Yeah. And I just -- I mean, Blue Stores besides food, it could also be kerosene because that's where I go to get kerosene, so.
        THE COURT: What do you use kerosene for?
        THE WITNESS: To help supplement the heat of the house.
        THE COURT: You work from kerosene at the house?
        THE WITNESS: Well, that house has no furnace in it, so we didn't have a choice when it got really cold, you had to run kerosene heaters.
        THE COURT: I know what they are, I grew up with them.
BY MR. BAUER:
Q   12/29 Hoyt Galleria, $19 is recreation?
A   Correct.
Q   12/29, 170 loan 30 cell web jan HB, 200-dollar deposit.
A   Yeah.
Q   Do you know what that was for?
A   That would have been money towards -- the girls would give me money towards their cell phone bills at the time because

they couldn't have it listed in their name.
Q All right. 12/30 National Income Insurance. This is life insurance?
A Right, again, the hospitalization plan.
Q All right. 12/30 McDonald's, $5.93 is food.
A Correct.
Q And we have Pet Smart, $25.62. This is for pet.
A Correct.
Q And we have Check No. 1915, $98. I have this as unknown. I think it was never produced, this check, so I don't know what that is. $98, presumably for house expenses, correct?
THE COURT: But you don't have anything --
MR. BAUER: I don't.
THE COURT: -- so it's a big presumption.
MR. BAUER: Yeah. Let me just take a --
THE COURT: Because that's a huge presumption. You have no idea.
MR. BAUER: I've always had it marked as unknown. I could never figure out what that was. Yeah, I don't know. Don't know.
THE COURT: Okay. And you don't recall it?
THE WITNESS: No.
THE COURT: Okay.
BY MR. BAUER:
Q Okay. 12/31, Walgreen's, $26.31 is medical.

A   Correct.
Q   Then we have 12/31 EZPass. This is --
A   Transportation.
Q   -- transportation. Let's see. 12/31, Williams Lumber, $32.47. I have this as unknown but I presume it was a contribution to the house of some kind.
A   Yes. I don't remember.
Q   All right. Check No. 1914, again, this is a check that I've not been able to --
          THE COURT: Switch the page.
BY MR. BAUER:
Q   -- track down so I don't know what this is, but it was --
          THE COURT: Flip the page.
          MR. BAUER: Thank you.
BY MR. BAUER:
Q   Check No. 1914 was for $88. I don't know what this is, Ms. Fraleigh. Would you --
          THE COURT: They've also got an asterisk beside it there. They have an asterisk.
          MR. BAUER: Next to 1914?
          THE COURT: Right. See it? Oh, down at the bottom. Oh, I know what it is. Never mind.
          THE WITNESS: That's out of sequence checks.
          THE COURT: Yeah. I was looking in the wrong place.
BY MR. BAUER:

Q All right. So that's unknown.
THE COURT: But it is something you paid to somebody?
THE WITNESS: Yes.
THE COURT: It wasn't anything that was paid to you?
THE WITNESS: No. $88, I mean, it could have been educational because I was writing checks out for exams that they had to have registered for.
THE COURT: How old were they at the time?
THE WITNESS: How were they -- they've been taking AP courses all through high school so the whole time this is going on they were doing that. They're in college now.
BY MR. BAUER:
Q Okay. Let's see. January 2nd --
THE COURT: Is this something you did or is this what the bank did? This is the bank account that's a different print, different type, different everything.
MR. BAUER: I think this is the savings account is what this account is. You'll see transfers and deposits. Let me -- and it's going from January through March and April, so I think this might be the same account. Let me --
THE WITNESS: It's all the other accounts.
BY MR. BAUER:
Q Those are all the other accounts?
A Right. They do it on a quarterly basis I believe for all those other accounts. You get your monthly checking statement

and then, you know, every three months they send you your rundown.

THE COURT: So this is your savings account even though it's called the checking?

THE WITNESS: Well, the loans -- got the loans on here. It's got L-14, L-38, the boat loan and the ready cash loan. That's what comes down. What page are you on?

THE COURT: And this is what --

MR. BAUER: Okay. I'm on it's called Page 2 and it starts -- actually there's savings and then it goes --

THE COURT: It has savings account at the top and it has --

MR. BAUER: -- January 2nd, 2010, debit purchase, $36.06.

THE COURT: This looks just like your bank account.

THE WITNESS: This is -- looks like the printout right from the computer. Like when you go to the credit union they print it out for you.

THE COURT: Yeah, that's what I thought.

BY MR. BAUER:

Q This is exactly what we gave plaintiff's attorney.

A Yeah, that.

Q Okay. So January 2nd we have Quick Chek, $36.06. This is food?

A Correct.

Q Then we have Pet Smart, $71.27. This is for pet.
A Correct.
Q Then we have an overdrawn fee of $24. We'll call this bank fees or credit card fees. It's an overdrawn fee.
Adam's is next on 1/2/ of $14.62. This is food?
A Correct.
Q Then we have another overdrawn fee of $24. That's a bank fee.
A Correct.
THE COURT: So every time they popped any of that money in there they did an overdraft too?
THE WITNESS: No. If I had the money in the ready cash I didn't get charged, but if they covered it, they -- I forget what they called it. If they covered it for me and paid it, I didn't get paid for overdraft, I got paid a fee.
THE COURT: The $24.
THE WITNESS: Right. So they covered it so it didn't bounce but I had to pay a fee of $24.
THE COURT: It's called a privilege fee, you see it down there.
THE WITNESS: Oh, yeah, that's what it's called.
BY MR. BAUER:
Q Then on January 2nd, transfer from savings of $1.93. This is a deposit other than payroll or child support.
January 2nd we have loan from HB $200. This is a deposit

other than payroll or child support.

MS. MALIN: I'd object, Your Honor. How does he know it's other than payroll or child support? How does he know what it's for? I think maybe that's her testimony.

BY MR. BAUER:

Q Ms. Fraleigh, what would this 200-dollar deposit be for, if you can recollect?

A It came out of the -- it came out of my son Ryan's account I can tell you because of the account number, so whatever --

THE COURT: So he was giving you money?

THE WITNESS: Well, knowing him, he was giving me money for something that I --

THE COURT: Had already purchased for him?

THE WITNESS: -- had already paid for, yeah.

BY MR. BAUER:

Q All right. January 4th we have Apple A Day, Red Hook, $33.21 is food.

A Correct.

Q January 4th, privilege pay fee, a bank fee, another $24, again a bank fee.

A Correct.

Q January 5th we have transfer to L-38, $26.63.

A Correct. That's probably again money that I was paying back that came out.

Q Okay. January 6th, Duchess County support of $66.49, we're getting child support again?

A Correct.

Q January 6th, Check 1913, AAA initiation fee.

THE COURT: Do you have it?

MR. BAUER: 1913.

BY MR. BAUER:

Q This is $10 and this is a transportation expense?

A Correct.

Q Okay. Then we have, on January 8th, direct deposit, $1,304.28. This is payroll?

A Correct.

Q We have Stewart's is next at $4.78. This is food?

A Correct.

Q Then we have transfer $554 and I haven't been able to determine what this is. Ms. Fraleigh, do you know what this is for? Do you recollect?

THE COURT: You had to transfer to somebody or some account.

THE WITNESS: No, somebody had to transfer it --

THE COURT: No, this is --

THE WITNESS: I had to transfer it.

MR. BAUER: Yeah, it was transferred out.

THE COURT: This is a debit, you took it out.

MR. BAUER: There's no record of what it --

THE WITNESS: If I had to guess, I transferred it to

one of the kids. I don't know. I really don't remember.
BY MR. BAUER:
Q All right. January 10th, Verizon Wireless, $301.39. This is telephone?
A Correct.
Q January 10th, Walmart, we have $18.47. This is food?
A Correct.
Q And we have Rhinebeck -- excuse me, Christy Restaurant, 9.69; this is food?
A Correct.
THE COURT: Switch pages.
MR. BAUER: Thank you, Your Honor.
BY MR. BAUER:
Q Rhinebeck BP, $9.69 that says food. Excuse me, Rhinebeck BP, $47.15 is transportation --
A Yes. Correct.
Q Okay. Then we have January 12th Eveready Diner, $41; this is food.
A Correct.
Q Then we have a withdrawal on January 12th. I presume this is food for the children?
A Lunch money, yes.
Q Okay. January 13th, Wendy's, 8.25; this is food?
A Correct.
Q We have Check 1917. This is Fireside Warmth Utilities,

$8.10.

A Correct.

Q Then we have Check -- excuse me, January 14th, Kodak Gallery, $3.61; this is recreation.

A Correct.

Q January 14th, Neptune Diner, we have $12.75; this is food.

A Correct.

Q Pilot Newburgh, $43.72; this is food.

A Or --

THE COURT: Gasoline.

THE WITNESS: -- fuel. Transportation.

BY MR. BAUER:

Q Okay. Home Depot, January 15th, I have this as unknown $23.79 but this is presumably something paid for the house.

A Correct. I don't remember exactly.

Q All right. DirecTV January 15th, we have 148.06; this is TV?

A Correct.

Q Okay. Then we have an advance from the L-38 account, $330; this is a deposit?

A That's correct.

Q All right. We have an ATM withdrawal on January 15th of $50; this is for food for children.

A Correct.

Q All right. Then January 15th, transfer from savings of

$38.87; deposit other than payroll or child support. January 15th, Victoria's Secret; this is presumably clothing.
A Correct.
Q Home Depot, January 18th of -- I have an unknown amount of 15.08 but presumably this is for house expenses.
A Correct.
Q All right. Shell Oil January 18th, we have 44.94; this is transportation.
A Correct.
Q Michael's Diner, 30.27; this is food.
A Correct.
Q Transfer from savings of $100; deposit other than payroll or child support. January 19th, Quizno's Subs, 19.42 --
THE COURT: Wait a minute, that loan until payday, that's a repayment from the kids, isn't it?
THE WITNESS: No, it's probably me -- them giving me money until payday when I pay them back.
THE COURT: Okay. All right.
BY MR. BAUER:
Q Quizno's Sub, 19.42 --
THE COURT: Switch the page.
MR. BAUER: Thank you, Your Honor.
BY MR. BAUER:
Q 19.42 is food. We have a reverse transaction of $26.63 from the L-38 account. This is money going back in the L-38

account.
A Correct.
Q Deposit, January 20th of $50. This is something other than payroll or child support.
A Correct.
Q We see January 20th, Check Number 1918, Welsh Sanitation; this is garbage, $71.41.
A Correct.
Q Receipts Staples is next and this is education expense of 7.56.
A Correct.
Q Dutchess County Support; child support is coming in again, 132.98.
A Correct.
Q Okay. January 21, Valvolene Transportation, 269.18.
A Correct.
Q Payroll direct deposit, 1093.34. This is your payroll coming in?
A Correct.
Q January 22nd, we have Shell Service Station of 2.15; this is food.
A Correct.
Q And we have Shell Oil for $47.74 as transportation expenses.
A Correct.

Q Check Number 1919 Corey Fraleigh for $100; this is --
A Paying her back the hundred dollars that I withdrew out of her account.
Q Okay. Thank you.
Shell Service Station is next, $4.85; that is food.
A Correct.
Q Then we have Tiberio's Red Hook, 52.54; this is food?
A Correct.
Q Fifty dollars withdrawal; this is presumably food for th children?
A Lunch money.
Q Hannaford, January 25th, 65.67; this is food?
A Correct.
Q Rent, $840 on January 25th.
A Correct.
Q Transfer from savings January 25th of $75; this is a deposit other payroll or child support.
A Correct.
Q January 25th, Redbox DVD rentals, $1.08 recreation.
THE COURT: Switch pages.
MR. BAUER: Thank you.
THE WITNESS: Correct.
BY MR. BAUER:
Q We have Foster's Coach House on January 25th, $80.15 food.
A Correct.

Q Withdrawal of $20; presumably food for the children.
A Correct.
Q EZPass is next of $15 is transportation.
A Correct.
Q Quick Chek, $41.71; this is food?
A Or transportation.
Q Food or transportation. Dutchess County Support of $66.49. This is child supports coming in.
A Correct.
Q National income insurance, $48. This is life insurance?
A Hospitalization, yep.
Q Then we have Children's Medical Group of $25, medical and dental insurance.
A Correct.
Q CVS, 7.47; this is medical expense.
A Correct.
Q January 28, Bed, Bath & Beyond, we have $10.79; grooming?
A Housewares or something.
Q Okay. PetSmart, Inc. Pet Care, 10.26?
A Animal, yep.
Q CVS is next on January 28th. This is 9.18, medical expenses?
A Correct.
Q Sixty-six point four nine coming into the account; this is child support.

A   Correct.
Q   And we have Shop-Rite, $39.72; this is food.
A   Correct.
Q   Dividend credit interest; seven cents. Okay. And then we move to February.
MS. MALIN: Can you just straighten that out so we can see?
THE COURT: Yeah, would you, please.
MR. BAUER: I'm sorry.
THE COURT: Thank you.
BY MR. BAUER:
Q   Okay. February 1st, Tiberio's, $33.15; this is food.
A   Correct.
Q   Shell Oil, $40.22; this is transportation.
THE COURT: It's on the page before.
MR. BAUER: Okay.
THE COURT: Right at the bottom -- right. Now you're ready to turn it.
THE WITNESS: Correct.
BY MR. BAUER:
Q   February 3rd, Shop-Rite, $14.81 --
THE COURT: Back up to the deposit; $940. No, same page -- turn the page. Nine-hundred-forty-dollar deposit. Cash back, $60; on us, 1,000. What's that?
MR. BAUER: February --

THE COURT: You got a credit of $940.

MR. BAUER: Yeah, I don't -- I don't know what that is. Nine hundred forty dollars. Cash back sixty -- something other than payroll or child support.

MS. MALIN: Your Honor, I object. Could we have the debtor testify as to what it is?

THE COURT: Yeah, he can do it on direct or you can do it on cross but that -- I want that circled and I need to have that question answered.

MS. MALIN: He could just ask her, that would be fine.

BY MR. BAUER:

Q Ms. Fraleigh, do you recall what this deposit of nine hundred --

THE COURT: February the 2nd, 2010.

BY MR. BAUER:

Q -- forty dollars is for?

A No.

THE COURT: It has cash back sixty. So that's why there's sixty --

THE WITNESS: Right.

THE COURT: -- but there's a thousand of some sort.

THE WITNESS: Right.

THE COURT: And then it looks your shorthand for something.

THE WITNESS: My shorthand?

THE COURT: Well, it's cash back on --

THE WITNESS: No, that's -- no, that's what they do when you go to the credit union. That's not done at home or anything. Cash back is what I went -- I deposited a thousand dollars, I wanted sixty back. So that's what they notate.

THE COURT: You don't recall a thousand-dollar deposit?

THE WITNESS: In February?

THE COURT: Yep. That's a chunk of change.

BY MR. BAUER:

Q Could this have been a cash advance perhaps?

A I -- I really am not sure at the time.

THE COURT: Okay. Go ahead.

BY MR. BAUER:

Q All right. February --

THE COURT: Third.

BY MR. BAUER:

Q February 3rd --

THE COURT: Shop-Rite.

BY MR. BAUER:

Q Shop-Rite, $141.81; this is food?

A Correct.

Q We have an advance on February 4th from the L-38 account, 25.62; this is so you don't bounce a check I presume.

A Correct.

Q And we have --

THE COURT: Looks like there's plenty of money in the bank.

BY MR. BAUER:

Q Adam's the next day, February 4th, $25.62; food?

A Correct.

Q We have an advance from the L-38 account of $5.84; again, this is so you don't bounce a check I presume?

THE COURT: Yeah, but if you look, there's a balance in the account. So I don't know what they're doing.

THE WITNESS: Yeah, but it could be because this was a check possibly deposited and it hadn't cleared yet.

THE COURT: But not --

MR. BAUER: May not have cleared.

THE COURT: Nine -- the nine forty.

THE WITNESS: The nine forty.

MR. BAUER: Some checks will take up to eight days --

THE COURT: I know.

MR. BAUER: -- for the bank to clear.

THE COURT: I know. Okay.

BY MR. BAUER:

Q DirecTV on February 4th, 148.06.

A Correct.

Q Amtrak, February 4th, 66.60; transportation?

A Correct.

Q Amtrak again, 66.60; transportation?

THE COURT: Who was going to Washington?

THE WITNESS: My daughters.

BY MR. BAUER:

Q Direct payroll, 1,291.94; this is your direct deposit of payroll.

A Correct.

Q February 5th, we have Mavis, 530.51; this is transportation expenses.

A Correct.

Q We have a transfer into your savings out of this account of $40.

A Correct.

Q A withdrawal of $50; presumably that's food for the children.

A Correct.

Q Roy Rogers is next of 7.83; that's food.

A Correct.

Q Gulf Oil, 45.19; this is transportation.

A Correct.

Q Twelve dollars, Hoffman Car Wash; transportation?

A Correct.

Q Williams Lumber, 5.41. I have unknown but presumably this is towards a house expense.

A Correct. I'm not sure.

Q Paradise Tanning, $12; this is grooming.
A Correct.
Q Race's? I have 16.20 for grooming.
THE COURT: Need to turn the page.
BY MR. BAUER:
Q I'm sorry, February 8th. Race's Hudson Plaza.
A Yeah, I can't remember what that is off the top of my head.
Q Sixteen point two zero.
A Yeah.
Q Presumably for the household.
A I'm not sure.
Q We have Southern Café is next of $43.47; this is food.
A Correct.
Q Dutchess County Support; we have child support again coming in, $66.49.
A Correct.
Q Shell Oil is next of three dollars; this is food.
A Correct.
Q And Shell Oil, 33.69; this is transportation.
A Correct.
Q United States Postal Service of 28.80; this is stamps and shipping.
A Yes, correct.
Q Transfer of $31.46. I don't know what that is. Do you recall what that is?

A No.
Q All right. Hannaford, $94.74; that's food?
A Correct.
Q Redbox DVD rental, 1.08; this is recreation.
A Correct.
Q Verizon Wireless, 306.91; this is telephone.
A Correct.
Q Check 1923, Chris Sekul towards utilities, $100. This is utility payment?
A Correct.
Q All right. Then we have February 11th, transfer to savings of $25. Okay. Presumably for food and again transfer of $25 to savings --
A Both my daughters' accounts --
Q -- for food for your children.
A -- correct, so they had lunch money.
Q Okay. Redbox DVD -- and those accounts were your daughters' accounts when it says transfer to savings.
A Yes, they were.
Q Okay. And the Redbox DVD rental of $1.08, this is recreation.
A Correct.
Q Quick Chek, 41.12; this is food.
A Or transportation.
Q Or transportation. Paradise Tanning of $12; this is

grooming.
A Correct.
Q We have Gulf Oil of 10.03; this is transportation.
A Correct.
Q Check 1921, Michael Schwartz, DDS --
THE COURT: Show it to us.
BY MR. BAUER:
Q -- 64.80 and this is medical or dental expenses.
A Yes.
Q Transfer from savings of $100. So this is a deposit other than your payroll or child support. Check 1922, M&O Sanitation, 264.91; this is -- this is the sewer --
A This is the --
Q -- pump -- the septic pump --
A Correct.
Q -- that takes place.
A Correct.
Q Okay.
A Just a notation, that's when it was paid, but that's not necessarily when it was pumped.
Q Understood. Okay. Two nineteen, Dutchess County Child Support, we're getting child support 66.49.
A Correct.
Q Payment for care --
THE COURT: When? When? 2/19? Switch the page then.

MR. BAUER: Thank you, Your Honor.

THE COURT: Yeah.

MR. BAUER: Yes. Child support -- thank you.

BY MR. BAUER:

Q Next is payment for Care Credit of $150; this is medical and dental expenses?

THE COURT: No, that's a credit. That's a refund.

A Right. That was money.

Q That's a credit card payment?

A Right.

THE COURT: No. She got it back --

THE WITNESS: No, I --

THE COURT: -- from the insurance company.

THE WITNESS: No, I didn't get --

THE COURT: It's a deposit.

THE WITNESS: Right. It came to me --

MR. BAUER: I'm sorry, you're --

THE WITNESS: -- not to it.

THE COURT: Yes.

MR. BAUER: You're absolutely right.

THE COURT: It's a reimbursement I would assume.

MR. BAUER: Thank you.

BY MR. BAUER:

Q Okay. February 20th, we have a withdrawal of $40; that's presumably food for the children.

A Correct.
Q 2/22 we have Dutchess County Support, 66.49 is child support coming in.
A Correct.
Q 2/22 Golden Wok, 41.10; this is food.
A Correct.
Q Lyceum Cinemas is next of 15.50; this is recreation.
A Correct.
Q Then we're seeing RCI Exchange of $59. This is recreation.
A Correct.
Q 2/22 is Sunoco, $40.46; transportation.
A Correct.
Q Roy Rogers, 7.83; this is food.
A Correct.
Q I've got Cree Restaurant (phonetic) of 17.27; this is food.
A Correct.

THE COURT: And the sooner I pay you the better?

THE WITNESS: That was Chris.

THE COURT: That's from him?

THE WITNESS: Yeah.

BY MR. BAUER:

Q Advance from L-38, $1,100; this is a deposit other than payroll or cash advance?
A Correct.
Q All right. February 23rd --

THE COURT: We're going to stop there for a second.

MR. BAUER: Yep.

THE COURT: That is from Chris, the sooner I pay you the better. Straighten up.

THE WITNESS: Well, he was pissed at me. And --

THE COURT: Okay.

THE WITNESS: -- he paid me that money back for money that I must have given him for something because he was pissed. He didn't want me to pay for something. So he paid me back.

MS. MALIN: I object to that answer, Your Honor.

THE COURT: Okay. You're going to have to do that on direct. Circle that again. We'll come back to that on direct. I'm going to sustain the objection on cross --

MS. MALIN: Thank you, Your Honor.

THE COURT: -- but make sure you circle it and come back to it, Mr. Bauer.

MR. BAUER: Yes, Your Honor.

BY MR. BAUER:

Q Okay, next. February 23rd we have Exxon/Mobil transportation, 44.76.

A Correct.

Q February 23rd, EZPass, $15; transportation expense.

A Correct.

Q 2/23 we have a withdrawal of $55. I have it marked as unknown. Presumably it's for house expenses or food for the

children?
A Yeah. I don't recall exactly.
Q All right. February 24th, Shell Oil, $5.51; this is food or transportation?
A Correct.
Q Gulf Oil, $12.06 on transportation.
A Correct.
Q Williams Lumber, $5.41. I have unknown. This would be an expense payable to the household.
A Yeah, I don't remember --
THE COURT: Push it up just a bit.
MR. BAUER: I'm sorry.
THE COURT: Thank you.
BY MR. BAUER:
Q Check 1926 --
THE COURT: Next page.
BY MR. BAUER:
Q -- $860. This is for rent.
A Correct.
Q Is that correct?
A Yes. And it also had -- it was a little bit more because it had the drug test that he paid for. I had to pay him back.
THE COURT: Say that again.
THE WITNESS: There's a notation it was more than 840. It was 860; I owed him $20 for a drug test for my daughter that

he paid for.

THE COURT: So that's the mortgage and the drug test.

THE WITNESS: Correct.

THE COURT: Okay.

BY MR. BAUER:

Q All right. Then we have Sam's Club on 2/25 of 126.23; this is food?

A Correct.

Q Check 1927, this is Brian Juran for 1,167; this is for your bankruptcy petition.

A Correct.

Q Then we have 2/27, overpayment for a drug test kit, 1.65. So you have a deposit coming back in. A dollar sixty-five --

THE COURT: Excuse me. Show me where that is. I think it's on the next page. What date is it?

MR. BAUER: I'm sorry, 2/27, $1.65 deposit. And then we have --

THE COURT: So -- you may bring this -- I want -- you can do that on direct, too. I want to know about that.

MR. BAUER: About the drug test.

THE COURT: Yeah. That it wasn't really $20; it was $18.15.

THE WITNESS: I tell you he can --

THE COURT: Okay. All right.

BY MR. BAUER:

Q All right. Interest into the account of sixteen cents. This is payment other than drug -- direct payroll or child support. All right. Let me go to March. Okay. March 1st, lunch money, $20; this is food?
A Correct.
Q National Income Insurance, $48, life insurance.
A Right. Hospitalization.
Q Stewart's, 19.94; this is food.
A Correct.
Q Twenty point eight nine. This is transportation for Shell Oil.
A Correct.
Q Taco Bell on March 2nd of $5.51.
A Correct.
Q This is food. Forty point nine five; this is Walgreen's on March 3rd --
A Correct.
Q -- medical and dental expenses. Advance from L-38, 61.14; this is a deposit other than child support or payroll.
A Correct.
Q March 3rd, Sam's Club, $62.08; this is for food.
A Correct.
Q HSBC transfer, $150 came in; again, it's a deposit other than payroll or child support. Jiffy Lube, transportation, 32.15?

A   Correct.
Q   We have a transfer negative 61.14 out of this account. I don't know what that was for.
A   I don't know either.
Q   Another transfer of $20. This is unknown. It might have been lunch money for the kids perhaps --
          THE COURT: Or the drug test.
BY MR. BAUER:
Q   -- I don't know what this is.
A   Yeah. Could have been the drug test or sometimes they would pay for things and I would pay them back by transferring the money in their account. So...
Q   March 5th, direct payroll, 1,052.44. Withdrawal March 5 of $100. I don't know what that is. Presumably it would be something for the household, food for the kids or something, correct?
          THE COURT: Petty cash.
          THE WITNESS: It was actually right around the girls' birthday. So it was probably to do stuff for their birthday and then -- because you see the next notation.
BY MR. BAUER:
Q   Transfer of $54; is that the one we just talked about?
          THE COURT: No, it's movies, birthday is $54.
          MR. BAUER: Okay.
BY MR. BAUER:

Q DirecTV, 154.10 --

THE COURT: Ms. Fraleigh, you're going to need to speak into the microphone. We're losing you.

THE WITNESS: I'm sorry.

BY MR. BAUER:

Q This is the TV, correct?

THE WITNESS: Can I move it over? The sun is going right into my eyes.

THE COURT: Just move over and just move the microphone to you.

THE WITNESS: Oh, okay. Thank you.

BY MR. BAUER:

Q March 8th, we have a DirectV payment of 154.10. This is for TV?

A Correct.

THE COURT: Change the page.

BY MR. BAUER:

Q Next is March 8th Quick Check, 43.67; this is food?

A Correct. Or transportation.

Q Or transportation. H&M, this is clothing; $33.47.

A Correct.

Q Exxon/Mobil 28.79 is for transportation?

A Correct.

Q Paradise Tanning; this is grooming for $12.

A Correct.

Q Tiberio's, food, 66.53?
A Correct.
Q Sam's Club, 106.76 is food?
A Correct.
Q Check 1924, Red Hook Central School District; this is education expenses.
A Correct.
Q 1924 -- let me just see.
THE COURT: 1924, 1925, same amount; you got twins.
MR. BAUER: These -- I don't believe these checks were given to me either. But, when I questioned the --
BY MR. BAUER:
Q Ms. Fraleigh, these checks I don't -- they were for tests. Either IB tests or AP at the time.
A 1924? Eighty-six dollars.
Q Correct.
A And that is for --
THE COURT: AP exam, it's on the bottom.
MR. BAUER: AP exam. Thank you very much.
THE COURT: And I would assume the second one is, too, because it's --
THE WITNESS: Right. I had to do separate checks.
MR. BAUER: Here's the other one, 1925.
THE COURT: Right.
THE WITNESS: Correct.

MR. BAUER: Eighty-six dollars.
THE COURT: Who is Yvonne Pierce?
MR. BAUER: I'm sorry, Your Honor?
THE COURT: Who is Yvonne Pierce?
THE WITNESS: I don't know.
THE COURT: She's on the bottom of the check.
THE WITNESS: Yeah, I know, but I don't know. Somebody in the school district, I presume. I don't remember.
BY MR. BAUER:
Q Okay. March 11th, Powers Auto, 25.40; transportation expenses, correct?
A Correct.
Q Taste Buds Chocolate, 11.84; that's food, correct?
A Correct.
Q March 11th Getty, transportation; 44.08.
A Correct.
Q Bel Air, $120 is recreation.
A Correct.
Q H&M, 31.15; clothing?
A Correct.
Q Check 1920, air field trip.
THE COURT: Red Hook? What page are you on?
MR. BAUER: Give me just a moment.
THE COURT: What's the date?
MR. BAUER: March 12th.

THE COURT: Is the ski --

THE WITNESS: Oh, yeah.

THE COURT: -- not there yet.

MR. BAUER: Nineteen -- Check Number 1920 air field --

THE WITNESS: Art. It's art field trip.

MR. BAUER: Art -- I'm sorry. Art field --

THE COURT: So education that was --

MR. BAUER: Yes. My notes say art field trip as I get closer --

BY MR. BAUER:

Q Okay. So that's an education expense.

A Yes.

Q Tiberio's is next, 3/13, $16.93; this is food?

A Correct.

Q Dutchess County Support coming in of 66.49.

A Correct.

Q Tax refund, 638.41. It's a deposit into your account.

A Correct.

Q Then we have Johnny's, $9.37; this is food.

A Correct.

Q Rhinebeck BP, $10 --

THE COURT: Switch the page.

BY MR. BAUER:

Q 3/15, Rhinebeck BP, $10; transportation expense?

A Correct.

Q Verizon Wireless, March 15th, 308.40; telephone.
A Correct.
Q CVS, $75; medical and dental expenses.
A Correct.
Q Getty, $37.62; transportation expenses.
A Correct.
Q Hobby Lobby, 8.28. I was unable to determine what this was for. Do you know, Ms. Fraleigh?
A Could have been a gift.
Q Okay. CTS Store, $12.49. Do you know what this -- I don't know what this is.
A No, I don't either.
Q Check 1928 for CVS.
A It would have been for probably prescription or something.
Q Fifty dollars and eighty-three cents, medical and dental expenses.
A Correct.
MS. MALIN: Excuse me, it said NYS license.
THE WITNESS: Yeah --
MS. MALIN: Could you just take another look at that?
THE WITNESS: That says license number. They took the license number down as identification.
MR. BAUER: I believe when they take your check --
THE COURT: Oh, okay.
MR. BAUER: -- they write your license number down.

THE COURT: All right. I saw the same thing and thought the same thing.

BY MS. BAUER:

Q 1929 -- all right. K&D Deli, March 17th, this is food, $12.19.

A Correct.

Q March 17th, deposit for life insurance, $80.

A Correct.

Q It's a deposit other than payroll.

A Correct.

Q Sam's Club, 91.73; this is food.

THE COURT: Is this your kids paying for their own life insurance?

THE WITNESS: This is my younger son paying for -- yeah, because after -- I don't know, at a certain point, he was nineteen and I told him I couldn't afford to pay for it, so if he wanted to keep it going, he had to pay for it.

THE COURT: Okay.

BY MR. BAUER:

Q March 17th, Sam's Club, 91.73; this is food?

A Correct.

Q Check 1928 --

THE COURT: And 1931 are -- oh, never mind. They're two separate -- I thought they were two things --

BY MR. BAUER:

Q 1928 is Children's Medical Group. This is medical and dental expenses, and then 19 --

THE COURT: Thirty-one is --

BY MR. BAUER:

Q -- thirty-one was Companion --

THE COURT: -- is the insurance.

BY MR. BAUER:

Q -- and that is -- I have unknown. I don't know what --

THE COURT: It's insurance.

A It's -- that's insurance. That's --

THE COURT: We've had that one before. It's insurance.

MR. BAUER: Thank you.

THE COURT: It has the policy number on the bottom.

BY MR. BAUER:

Q All right. Next we have In-Change Education Foundation, $30. This is an education expense --

THE COURT: In-Charge Education, not In-Change --

MR. BAUER: I'm sorry --

A I believe that was the thing I had to do online, like --

THE COURT: Oh, for the --

THE WITNESS: For bankruptcy.

THE COURT: -- probably in the bankruptcy.

THE WITNESS: Yeah.

BY MR. BAUER:

Q Payroll deposit, 878.85.
A Correct.
Q We have college board SATs of $45. That's an education expense twice.
A Right. Both the girls signed up for SATs, yes.
Q March 19th, Powers -- --
THE COURT: Were they in school?
THE WITNESS: They were in school.
THE COURT: Where did they go to college?
THE WITNESS: Well, now -- one is at Dutchess and one is at Western New England.
THE COURT: Okay.
THE WITNESS: They were in Red Hook High School then.
THE COURT: Okay.
BY MR. BAUER:
Q Powers Auto, negative 7.03, negative --
THE COURT: Return --
BY MR. BAUER:
Q -- transportation account. Tiberio's, 108.18 is food?
A Correct.
Q Check 1933 is Wells --
A Next page.
Q -- Sanitation. Wells Sanitation; this is garbage.
A Correct.
Q Quick Chek, March 22nd is 39.81; this is food.

A Or transportation, yes.
Q Or transportation. Burger King is next; food, 7.66.
A Correct.
Q Quest Diagnostics on 1932; this is medical and dental expenses.
A Correct.
Q And then we have 1935, Quest Diagnostics.

THE COURT: You didn't turn the page. You need to turn the page for us.

MR. BAUER: Thank you, Your Honor.

BY MR. BAUER:

Q Check Number 1935, Quest Diagnostics and this is medical also of 64.17.
A Correct.
Q We have EZPass, March 24th is a transportation expense, $15.
A Correct.
Q Verizon Wireless, March 24th, 24.32; this is telephone.
A Correct.
Q Stewart's, $3.03; this is food.
A Correct.
Q Getty is next of 43.73, March 25th; this is transportation.
A Correct.
Q Adam's, 3/29, we have $17.50; food.
A Correct.

Q Forty-eight dollars, National Income Insurance. This is life insurance.
A Right. Hospitalization.
Q Olive Garden; food, 110.39.
A Correct.
Q Quick Chek, 42.53; this is food?
A Or transportation.
Q Or transportation. Eight point nine seven; this is Johnny's.
A Food.
Q Food.
A Yep.
Q Dutchess County Support, 332.45, something -- child support?
A Correct.
Q Stewart's, 34.79; this is transportation.
A Correct.
Q Marshall's, 151.87; this is clothing.
A Correct.
Q Marshall's again, $20.79 is clothing.
THE COURT: Switch.
THE WITNESS: Correct.
MR. BAUER: And we have interest. All right. Now, at this point, a calculation has been made as an average of six months of what the debtor has paid on these six months of bank

statements, and I'd like to compare these numbers that we've gone over -- well, first, I'd like to offer into evidence Exhibit B, a list of checks.

THE COURT: Any objection?

MS. MALIN: I would object on the grounds, Your Honor, I don't think that she identified all the checks for the record, said that she made out those checks, and therefore, she identified the first one and the second one; she didn't identify them all between. What he simply did is this a check for this, yes; is this a check for this, yes. That's not identification --

MR. BAUER: Ms. Fraleigh --

MS. MALIN: -- that satisfies the authenticity rules.

THE COURT: Mr. Bauer?

MR. BAUER: Ms. Malin stipulated that for authenticity purposes --

THE COURT: Ask her the question. Just go through it.

BY MR. BAUER:

Q Ms. Fraleigh, of all the checks that we have reviewed today, did you sign these checks?

A Yes, I did.

Q They all came from this account at Hudson Valley Federal Credit Union?

A Yes, they did.

THE COURT: Very good. I'll admit them.

MR. BAUER: Thank you, Your Honor.

Okay. If I can have Plaintiff's Exhibit --

THE COURT: Okay. If you're going to -- now, are we still in cross?

MR. BAUER: Cross.

THE COURT: Okay.

MR. BAUER: Cross-examination still.

(Counsel confer.)

MR. BAUER: Entered into evidence as Plaintiff's Exhibit 29, this is the debtor's petition. I want to go to Schedule I. Excuse me, Schedule J of the petition.

(Plaintiff's Exhibit 29 in evidence.)

THE COURT: Okay.

MR. BAUER: Okay.

BY MR. BAUER:

Q Ms. Fraleigh, what we're showing -- $840, that's what you pay in rent and you've testified that was one half of the mortgage payment, correct?

A Correct.

Q Okay. Next, we have -- we have electric and heat. We have 225.

A Correct.

Q Could it be said that the cash advances you gave Mr. Sekul from your credit cards into the L-38 account went to pay indirectly electric and heat?

MS. MALIN: I'm going to object, Your Honor, because could it be said. It is either it is or it is not.

MR. BAUER: Your Honor, it's an indirect expense. She's --

THE COURT: I think she's testified to an indirect expense on direct. You can couch it that way. I will overrule your objection.

BY MR. BAUER:

Q Could it be said that the cash advances went to pay indirectly the heating and electric?

A Yes.

Q Okay. Next, we have water and sewer of $35, and it's been testified here today that you make a payment to have a septic pump and it approximates $35 a month, correct?

A Correct.

Q All right. We have telephone, you have listed here $145.

A Correct.

Q In fact, if we add up all the numbers we've just gone through and divide by six, that amount averages $250.58.

THE COURT: Is there a question somewhere there, Mr. Bauer?

BY MR. BAUER:

Q Did you understate your telephone expense on your petition?

A I could have. I do receive --

Q The --

A -- a portion -- a little bit from my daughters.
Q All right. The amount that we've gone through calculated up to $250 on average and we have listed here $145. So it could be said that you understated your telephone.
A Yes.
Q Okay. Then we have other expenses of $185.70. We have DirecTV of $150.
A Correct.
Q If we calculate the TV that was paid for in the past six months and divide by six, according to your bank statements, we come up with $124.39. So the question is did you overstate your TV by a little bit on the petition --
MS. MALIN: I'd like to object to the question, Your Honor, on the grounds that there's no -- unless she adds up the numbers, there's no way to determine whether or not those numbers are correct. It's not Mr. Bauer's testimony here. Cross or not, that question is only has she overstated. She basically testified on direct that that's what she was paying. Now he's bringing --
MR. BAUER: I've got the numbers for her. So, you know, we can sit here all day with a calculator and go through all this again or --
THE COURT: We've heard she's overstated and understated. So right now we're even.
MR. BAUER: Right. Right. That's what I want to

show.

BY MR. BAUER:

Q Okay. Next we have garbage pickup --

THE COURT: So I'm going to sustain the objection.

BY MR. BAUER:

Q -- $35.70. When we go through all the checks and your bank statements and the garbage that you paid for six months and divide by six, we actually come out with an amount of $35.71. So it could be said you've understated the garbage by one penny. Yes?

A Yes.

Q Okay. Telephone -- food, we have $550. If we add up all of the food in the bank statements that we have gone over and divide by six for six months, we come up with an average of $672.40. When you've listed $550 on your petition, did you then in fact understate your food?

A Yes.

Q Okay. Clothing, you have $145. If we add up six months prior to filing and divide by six on all the amounts we've gone over on the bank statements and canceled checks, we come to $152.74. Did you in fact then understate your clothing by $7.74?

A Yes.

Q Okay. Laundry and dry-cleaning, $45. If I add up all of your expenses the past six months that we've gone over on the

bank statements and checks, we come up with a number of $5.83. So we've overstated laundry and dry-cleaning by about $39, correct?
A Correct.
Q All right. Medical and dental expenses, we're saying $100. If we go through your bank statements and checks that we've just gone over and added up all those numbers and divide by six, we're coming up with an average of $186.76. You've listed a hundred dollars. Are you then understating your medical and dental expenses by $86.76?
A Yes.
Q Transportation, we have listed $150. If I go through and add up all of your expenses on the bank statements and checks we've just gone through and divide by six to get an average for six months, we come up with $399.27. Are you then understating your transportation by approximately $250?
A Yes.
Q Understood. Thank you.
Recreation, we have a hundred dollars listed on the petition. If we go back through and I add up all your checks and bank statements, divide by six for the past six months, we come up with a number of 239.97. Are you in fact understating your recreation by $140?
A Yes.
Q Charitable contributions of $20; in the past six months I

haven't seen any charitable contributions come out of the bank account. You've testified earlier that you made cash advances. Let me ask you now -- excuse me, that you've paid cash when you went to church. Let me ask again. Did you pay cash of $20 a month as charitable contributions to the church when you went? Within the six-month period of time before you filed this petition.

A Between that and whatever other charities, you know, here and there that I gave to, yes.

Q Yes. Okay. All right. Life insurance, $49.65. If I go through your checks for the past six months and add them up and divide by six, I get an average monthly amount of $117.30. You're listing about fifty bucks. Are you then understating your life insurance by about $68 a month?

A Yes.

Q Auto insurance. If I go back and add up all your numbers in your bank statements and canceled checks in the past six months, I am seeing $175.34. You have listed $89 in the petition. So could you have understated your insurance for auto by about $90?

A Possibly, but I don't know if -- ooh, sorry -- that you included the girls' insurance in that.

Q Okay.

THE COURT: And the same on the life insurance; we don't know that you included her son's insurance on that because she paid her son's life insurance and he paid her back.

MR. BAUER: Okay.

THE COURT: Correct? Is that correct, Ms. Fraleigh? Did I state what you testified to?

THE WITNESS: Yeah, but I don't know if that was calculated --

THE COURT: I don't either.

THE WITNESS: Right.

BY MR. BAUER:

Q All right. Education expenses. We have listed on the petition $83. If I go back through and go through your checks for the past six months and divide by six after looking at all the canceled checks and your bank statements, I come up with a number of $140.76. Again, you've listed $83. Did you in fact understate your education expense by about -- what is that, $60?

A Yes.

Q Fifty-seven dollars?

Okay. Some other expenses. We had grooming expenses, on average every month about $16. Did we list grooming expenses on the schedule? Do you see them anywhere?

A No.

Q No. We had stamps and shipping of about $5 a month. We don't see that on the petition either, do we?

A No.

Q No.

MR. BAUER: That's -- that's all the questions I have at this time, Your Honor.

THE COURT: Redirect.

MR. BAUER: Other than -- I'm sorry, let me just finish.

BY MR. BAUER:

Q Ms. Fraleigh, you've testified today that you split the house bills fifty-fifty with Mr. Sekul. Now that we've gone through your bank statements and checks, is it a better reflection to say that you pay a majority of the house bills and the cash advances you give Mr. Sekul indirectly go to heating and electric --

MS. MALIN: I would object, Your Honor, as to I think that was more his testimony than it was the debtor's. I don't think there was actually --

THE COURT: I'm going to let you do that on direct because I want the answer to that question, too.

MR. BAUER: Very good. I have no further questions at this time.

THE COURT: So I'll sustain that objection on cross. I know she brought it out but I'm going to let you bring it out more clearly.

MR. BAUER: All right. I'll put Exhibit A up here, Your Honor.

THE COURT: Thank you.

MR. BAUER: Thank you, Your Honor.

MS. MALIN: Your Honor, if I just might have a couple of redirect questions.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MS. MALIN:

Q Ms. Fraleigh, during this period of time, did your two daughters work?

A No, I don't believe so.

Q How were they able to pay all these expenses?

A They worked prior to that time period. They worked in the summer prior to that.

Q Oh, and then they'd save the money up to pay those expenses?

A Uh-huh.

Q Did they contribute to any other expenses in the household?

A Other than their car insurance and occasionally they would give me towards their cell phone, no.

THE COURT: And their drug test.

THE WITNESS: Yeah. Well...

THE COURT: Did they have to have drug tests for school or something?

THE WITNESS: No. My one daughter, it was kind of mandatory in the household I lived.

BY MS. MALIN:

Q Based upon your testimony regarding adding up your food bill, it appears that your food bill on an average six months prior to the filing was approximately $570. It seems to me that if I add up those, more than half of that was spent at fast food and restaurants. So would it be fair to say that only half that money was spent on groceries actually brought into the household?

A I don't know. If the math shows that, but it's still household. I'm still feeding myself or the kids or both. So does it matter?

THE COURT: Excuse me, just answer the question. You don't need to ask her a question. It's just an answer. It's legitimate no matter where you spend it. You can say yes.

THE WITNESS: Okay. Well, I don't know. Can you repeat that, the numbers?

MS. MALIN: Well --

THE COURT: When you look and added up, it seems that you eat out more often than you eat at home. Is that correct?

THE WITNESS: Probably at the time, yes.

BY MS. MALIN:

Q And that was always with your children in tow? When you were eating out, it was with your kids there?

A Or it was them and not me.

Q So it would be fair to say that during the six months prior

to the filing of your petition, you and your two daughters would eat out most of the time and not eat at home?
A I wouldn't say most of the time. A lot.
Q During this period of time, did your daughters live anywhere else other than at your home?
A No.
Q So they were consistently living on a daily basis at your home?
A Pretty much, yeah.
Q Now, you looked again at your bankruptcy petition and I don't know -- when you were filling out the Schedule J, did you read it?
THE COURT: She said she did earlier.
BY MS. MALIN:
Q All right. She was -- basically it asked that you estimate your expenses as of the date of the filing, not six months prior to on Schedule J. So clarify for me, is it your testimony that you averaged your six months of expenses and put them on here or you just looked at what you were spending as of April 2010 and wrote those expenses here?
A Can you repeat the first part? Because I don't -- I don't necessarily remember --
Q The expenses that were placed on the Schedule J.
A Correct.
Q Were they reflective of what was -- you were expending in

April 2010?

A It would have been an average -- the months to me filing that because this -- the numbers weren't given and prepared all in one day.

Q Well, did you prepare these numbers or did someone else prepare them? I guess --

A I think I testified to that earlier. I gave Mr. Juran the information and he came up with these numbers and that's how we got them.

Q And those -- the information that you gave them, was it the bank statements and canceled checks the six months prior to the filing?

A No.

Q Then what was it?

A It was me looking at bank statements. I didn't have the canceled checks. So I couldn't be as specific because I -- if you look at the bank statements you can see -- where you can't tell what things are necessarily written for unless you have the canceled checks. So it was going over my bank statements and estimating the best I could and whatever bills I know came in consistently and relating that information to him.

Q So you calculated the numbers, not him. Because it seemed to me before that you had testified that --

A No, I didn't.

Q -- you gave him documents, bank statements and checks, and

he calculated the numbers. Mr. Juran calculated the numbers. Now it seems to me you're stating that you calculated the numbers and just told Mr. Juran. I just want to know --
A It was both.
Q -- who did it.
A I gave him bank statements. He wanted so many months of bank statements, so many months of credit card statements, so many months of whatever. Whatever he asked, I gave him. Specifically, like I said, I can tell you credit card statements, bank statements. He didn't ask for canceled checks.
Q Okay.
A I don't remember if he asked for copies of DirecTV things and the ones that were in my name. I don't remember if he asked for them.
Q Okay.
A But I gave him what he requested, my pay stubs. I gave him all that, and then other things were either something I filled out and I estimated on my own by looking at statements. That's -- I gave all that information, whether it was verbal, written or copies of things he requested and he came up with these numbers. And I at the time agreed with them.
Q I'm going to direct you then to what I've marked as Exhibit 27, plaintiff's. I'm going to go through it so you can see it so tell me when you change the page.

A Okay.

THE COURT: Is she supposed to be looking at this?

MS. MALIN: Yeah, if she could just say okay, so I can switch to the next page, she can review it, just -- then I can ask questions.

THE COURT: Is that your handwriting?

THE WITNESS: Looks like it, yes.

THE COURT: Okay.

THE WITNESS: Okay.

(Pause in proceedings.)

THE WITNESS: Okay.

BY MS. MALIN:

Q Done looking at that? I just want you to look at all the pages. Tell me when you're done, I'm not holding it here any longer than --

A Okay. I mean, I don't know if I'm looking at --

THE COURT: These are the same ones you were shown before.

THE WITNESS: Okay.

(Pause in proceedings.)

THE WITNESS: Okay.

BY MS. MALIN:

Q Have you seen the documents that comprise this exhibit before? That make up the exhibit. Have you seen these documents in here before?

A I believe I saw this letter, yes.

Q Okay.

A And this I've seen before because I wrote it.

Q You filled it out?

A Correct.

Q And where did you get this form from?

A I believe -- I believe it's from Mr. Juran.

Q Based upon what the letter states is that Mr. Juran had turned these documents over to me on the basis of a subpoena on the grounds that I asked him what had given him to base your petition on and this is what he sent back to me. As you see, there is no bank statements, correct?

A Correct.

Q There's no credit card statements?

A Correct.

Q Okay. So Mr. Juran says this is all you gave him --

MR. BAUER: I object --

BY MS. MALIN:

Q -- did you just write that?

THE COURT: I was going to say you're going to have to ask through Mr. Juran --

MS. MALIN: That's fine. I will.

THE COURT: I'll sustain the objection.

MS. MALIN: Fine.

MR. BAUER: Thank you, Your Honor.

MS. MALIN: I believe that's all I have, Your Honor, for this witness at this time.

(Witness excused.)

THE COURT: Do you -- you need Mr. Juran. We need --

MS. MALIN: Yeah.

THE COURT: -- fifteen minutes. We'll take a fifteen-minute break.

(Recess taken.)

(Proceedings resume.)

THE COURT: I'm going to ask you to raise your right hand.

BRIAN JURAN, WITNESS FOR THE PLAINTIFF, SWORN.

THE COURT: State your full name.

THE WITNESS: Brian Juran.

THE COURT: And your address, please.

THE WITNESS: 654 Aaron Court, Kingston, New York 12401.

THE COURT: Very good. Ms. Malin is going to ask you the first questions and we'll go from there. Can you see us by any chance?

THE WITNESS: Are you asking me?

THE COURT: Yeah.

THE WITNESS: Yeah, I can see you. It's just a little blurry.

THE COURT: You can see me but you won't be able to see Ms. Malin, but you're familiar with Ms. Malin --

THE WITNESS: Yes.

THE COURT: -- and she will speak up into the microphone and still -- and so will Mr. Bauer or Mr. Zirt.

THE WITNESS: Thank you, Your Honor.

(Court and clerk confer.)

THE COURT: Oh. You can come -- well, they've got to face me, don't they? You can come -- if you wanted to face him, but I think you can face me. Mr. Zirt?

MR. ZIRT: Yes, Your Honor.

THE COURT: Do you have anything -- your attorney, Mr. Zirt is here.

THE WITNESS: Thank you.

MR. ZIRT: Your Honor, I'm simply here as attorney for the witness. I can stand next to Ms. Malin.

THE COURT: Would you, please, and just simply state -- when you get there simply state -- can you just turn that around toward them? No, because it wouldn't show me. Okay. I'm in charge. Okay.

MS. MALIN: He can hear me in this.

THE COURT: Bring it closer to you, and Mr. Zirt, stand beside Ms. Malin.

MR. ZIRT: Yes, Your Honor.

MS. MALIN: Now, just quickly, this is the exhibit I gave him. So I'll just -- well, I can't keep this because you can't see it.

THE COURT: Okay. I can but you -- I've got it.

MS. MALIN: But you have your copy. I'm sorry.

THE COURT: I've got it. Okay. First, Ms. Malin, just to sort of sound test, say hello to Mr. Juran.

MS. MALIN: Hello, Mr. Juran. How are you doing?

THE WITNESS: Good. How are you, Andrea?

MS. MALIN: Very good. It's nice to see you.

THE COURT: Okay. And, Mr. Zirt, if you'll stand beside her and do a sound test as well.

MR. ZIRT: Can you hear me as well, Brian?

THE WITNESS: Yeah. You're just a little low but I can hear you.

THE COURT: Okay. When anyone speaks, just speak carefully into the microphone. Go ahead, Ms. Malin.

DIRECT EXAMINATION

BY MS. MALIN:

Q Good afternoon, Mr. Juran. Thank you for appearing today. I'm hoping everything is well with you.

A Yes.

Q I just want to ask you a couple of questions. If you can't hear me for any reason, just indicate to us. If we can't hear you, just indicate by wave of the hand that maybe the sound went away.

A Of course.

Q Okay. Do you know the debtor, Donna Fraleigh?
A Well, I filed her bankruptcy.
Q Okay. Prior to today, did you discuss with anybody getting ready for this trial testimony?
A Prior to today.
Q To today.
A I discussed with Mr. Zirt briefly.
Q Did you discuss with anybody your trial testimony today?
A Well, no.
Q Do you know when it is you came to meet Ms. Fraleigh?
A Well, I'm reading this letter you sent that looks like I sent on December 20th, 2010.
Q Can you explain to me what process you use in a normal situation with a bankruptcy intake, your office procedure?
A The normal office procedure?
Q Please.
A I meet the client for the first time. I give them a review. I give them a consultation. I review their -- when they come to the office, they fill out like an intake, you know, how if you -- of Attorney Brian Juran, your name, your address, are you married, are you single, are you working, and that type of a thing. So I take that in, the secretary gives it to me, and the client comes in, and I discuss the intake they filled out with the client and then they ask some questions.

Q Did Ms. Fraleigh fill out such an intake form?
A I assume she did. You know, with her name and address, that kind of a thing.
Q Did Ms. Fraleigh -- when you met with Ms. Fraleigh, was anyone else present?
A Well, I can't specifically remember anything about meeting with Ms. Fraleigh but I can tell you as normal office practices, I am the only one who meets with the client. I am the only attorney at the office. So, although the staff does a lot of work, I am the only one that meets with clients.
Q And you have one initial consultation?
A Are you asking me again as a general practice?
A Yes, as a general practice.
A I have one initial consultation and then the clients will hire me by making some form of payment for attorney's fees. I then give them all kinds of paperwork to fill out and stuff to sign and get signed up, and then I give them an appointment to come back with all the paperwork and meet with me.
Q Okay. So I have -- you got the fax that -- or the e-mail that we sent you, correct?
A Yeah. It's -- I have the letter that I sent to you, a thing that's from the best case and then a bunch of pay stubs.
Q Okay. Does this refresh your recollection as to what documents you would have reviewed from Ms. Fraleigh when you prepared her bankruptcy petition?

MR. BAUER: I'm going to object to that, Your Honor. He didn't indicate that he didn't have any recollection with respect to her --

THE COURT: Get to the microphone.

MR. BAUER: Your Honor, Mr. Juran didn't indicate that he didn't have any recollection when he prepared the bankruptcy petition.

THE COURT: Okay. Ms. -- I'm going to -- I have to overrule your objection because Ms. Malin's question was does this refresh your recollection. So the question is did the documents you received refresh your recollection.

Mr. Juran, receiving this documentation, did it refresh your recollection of Ms. Fraleigh and her case?

THE WITNESS: No, it does not refresh my recollection of Ms. Fraleigh. Obviously, it was several years ago and I filed hundreds of bankruptcies since then. So, you know, these types of clients with simple Chapter 7, no asset cases sort of have a way of blending into each other. So I do not have a specific recollection of Donna Marie Fraleigh.

THE COURT: Okay.

BY MS. MALIN:

Q Have you had a chance to review the documents sent to you?

A Well, I just read it now.

Q Can you identify what it is for the record?

A Well, one page looks like a letter that I was kind enough

to send to you, Andrea, two times. Another one is also what I probably sent to you was a page from that best case thing that I have clients fill out with their information, and it looks like a bunch of pay stubs from Ms. Fraleigh.
Q So then this would be the documents that you would have received from Ms. Fraleigh in --
A That -- yes, it appears that way.
MS. MALIN: I would just like to move them into evidence, Your Honor.
THE COURT: Any objection?
MR. BAUER: I'm sorry, what --
THE COURT: This is just the exhibit -- that Ms. Fraleigh has already basically testified to on all of this.
MR. BAUER: And the pay stubs -- I don't have an objection.
THE COURT: Very good. We'll submit it into evidence.
MS. MALIN: Thank you, Your Honor.
BY MS. MALIN:
Q Now, you said that this was a letter that you sent to me pursuant to a request I made. Is that correct?
A I believe. That I remember actually better than Ms. Fraleigh because it was you, Andrea, and I think I sent this to you twice; once on sort of the date that's noted and then a second time after the discovery proceeding was over and you were sort of complaining that it was lost in a flood. So I was

kind enough to send it to you again.

Q Okay. And it was in response to a subpoena, was it not?

A I believe the first time was because I'm just reading the letter, pursuant to your subpoena dated 11/24/10 with a postmark date of 12/1/10 and received by me six days later on 12/6/10.

Q Right. And that subpoena basically requested that you provide to me all of the documentation that you relied upon in putting together Ms. Fraleigh's position, correct?

MR. BAUER: Objection, Your Honor. If a subpoena has been issued, it's supposed to be filed with the Court, right?

THE COURT: No, it's not. You don't have to file discovery documents with the Court --

MS. MALIN: Unless there's a motion --

THE COURT: Yeah.

MS. MALIN: -- against them.

THE COURT: So --

MR. BAUER: I've never seen the subpoena so I don't know what it asks.

THE COURT: I don't think you have to. So it's a subpoena duces tecum that I'm going to -- that's my understanding. It doesn't have to be --

MS. MALIN: The local rules provide only if there's a discovery dispute --

THE COURT: That's what I thought, too.

MS. MALIN: -- the discovery documents get filed.

THE COURT: So I'm going to overrule that objection.

MS. MALIN: Okay.

THE WITNESS: What is the question?

THE COURT: Did you have any other documentation beside this to fill out the petition?

THE WITNESS: Do I -- did I have any other documents besides this to fill out the petition?

THE COURT: Right.

THE WITNESS: Is that the question?

THE COURT: That's the question.

THE WITNESS: Well, obviously, I had many more pay stubs.

THE COURT: Okay. What about bank review -- bank statements?

THE WITNESS: I'm sure I had bank statements. You know, my normal thing is I give them a list. So I have things like bank statements, the title to the car, things of that nature. However, I'm reading this letter and it looks like I was responding to the subpoena sent by Ms. Malin, and it says used to draw up Schedule I and also for Schedule J expenses. So I believe that her subpoena was probably asking for what I used to draw up Schedule I and Schedule J.

THE COURT: Okay.

THE WITNESS: You know, by reading this letter.

THE COURT: Right.

THE WITNESS: So that's why I sent these things in response to her subpoena.

BY MS. MALIN:

Q So then it would be fair to state that these are the things that you relied upon when you were putting together Schedule I and J.

A Well, in addition to other things.

Q Well then, why wouldn't you have given those to me as part of the subpoena, sir?

MR. ZIRT: Judge, I'm going to object --

A Because they're not in writing, ma'am.

THE COURT: Ms. -- wait, wait, wait. Time out, Mr. Juran. Mr. Zirt?

MR. ZIRT: Judge, I'm going to object. Mr. Juran answered that the subpoena indicated to him to provide those things. He said that he provided other things but the subpoena indicated to him that, in fact, he should provide these limited things.

MS. MALIN: I don't think that's what he testified to but I'll ask again.

MR. BAUER: Your Honor, I have to object because I don't know what the subpoena says. I've never seen it.

THE COURT: No one has, but that's okay. I -- I think the question has been asked and answered. He provided what he felt was to do I and J, that's what he says in the letter, and basically he said if you need anymore documentation let me know. So I will sustain the objections from everybody.

BY MS. MALIN:

Q Do you recall whether Ms. Fraleigh advised you that she was living with Mr. Christopher Sekul?

MR. ZIRT: Objection, Your Honor; attorney-client privileged communications.

MS. MALIN: As to go to the direct order that this Court entered that I was allowed to ask these questions as to what the disclosure was made to the attorney to see whether or not --

THE COURT: Okay. Okay.

MS. MALIN: -- her defense was --

THE COURT: We're going to -- I'm going to sustain the objection and rephrase the question. Mr. Juran, I'm going to ask the question, and the question is did you ever meet with Ms. Fraleigh and her live-in boyfriend Sekul -- Christopher Sekul?

THE WITNESS: Is this question before I filed the bankruptcy or ever?

THE COURT: Before you filed for bankruptcy.

THE WITNESS: I don't remember anything about it before I filed the bankruptcy. I don't remember anything about Donna Marie Fraleigh's case.

THE COURT: Very good. Mr. Zirt, I'm going to sustain your objection because it is attorney-client privilege because of what he said. Okay. Go ahead.

BY MS. MALIN:

Q Do you still maintain Ms. Fraleigh's file in your office?

A Do I maintain her file in my office? Was that the question?

Q Correct.

A No.

Q Do you have it stored in a storage space?

A I believe it is in the storage space with all the other files.

MR. BAUER: I have to object as to relevance. How is this relevant --

THE COURT: I agree. Sustained. What's relevant about it?

MS. MALIN: Just trying to see whether or not he looked at that -- I just was going to ask him if he had the file, did he review the file prior to his testimony.

THE COURT: You can ask him that. Did you review -- did you review the file prior to your testimony?

THE WITNESS: No.

THE COURT: Okay.

BY MS. MALIN:

Q You're admitted to practice law in the State of New York?

A   Yes, and New Jersey and Federal Courts.

MR. BAUER: Objection as to relevance, Your Honor.

THE COURT: Federal Courts, New Jersey. It's been asked and answered. I don't disagree with you but it's a good question.

BY MS. MALIN:

Q   How long have you been practicing law?

THE COURT: Sus -- over -- overruled.

MS. MALIN: I'm sorry.

BY MS. MALIN:

Q   How long --

A   More than ten years.

MR. BAUER: Objection as to relevance, Your Honor. I don't know how it's relevant to --

THE COURT: I'm going to --

MR. BAUER: -- contributions --

THE COURT: I'm going to -- I understand. I'm going to let the line of questioning continue, again just as I have for a few minutes. We'll see what it is. Right now, I'll overrule you for the time being but we'll keep an eye on it.

MR. BAUER: Yes, Your Honor.

BY MS. MALIN:

Q   Do you -- have you in the last -- or let me -- I'm sorry. Let me rephrase that.

You are aware that the law changed -- bankruptcy law in

October 2005?
A Yes, of course.
Q Okay. After the change in the law, have you maintained continuing legal seminars or other legal studies as required with the CLE?
A Of course.
Q And have any of them been in bankruptcy?
A Yes.
Q Have they been specific to understanding the means tests?
A Well, yes.

MR. BAUER: I have to object, as to relevance for this, Your Honor, I just don't understand --

THE COURT: I do, too. He's -- I don't know. What are we trying to get at here?

MS. MALIN: Just how much knowledge he had at the time of the filing of the petition, Your Honor, as to regard to bankruptcy law and how it works.

MR. BAUER: Well, Judge --

THE COURT: Okay. Well, he's already testified that he looks at bank statements, other documents, he looks at the whole thing. He regularly reviews them. He also gives them a form and then comes in -- they come in initially, they come back again. I mean, what are you --

MS. MALIN: I didn't hear him say bank statements, Your Honor, but --

THE COURT: He did say bank statements, did you not, Mr. Juran?

THE WITNESS: Yes, Your Honor.

BY MS. MALIN:

Q And how many months do you usually request?

A Of bank statements?

Q Yes.

A Three to four months and then ongoing after we have the initial three or four until the client is completed and filed. As you know, Andrea, clients drag on for months and months and months. So this letter -- you know, I may meet the client in October and they hire me, but if they get filed, you know, three, four, five months later, that's actually fairly quick.

So I have bank statements leading up four or five months before they hire me. They bring the old ones, and then they bring in bank statements, all the months until they're filed.

Q So then you would require them to have how many bank statements prior to you actually completing and filing the petition?

MR. ZIRT: Judge, that's been asked and answered. He indicated that he had three or four months of statements.

THE COURT: Sustained.

BY MS. MALIN:

Q How about paycheck stubs?

A Well, it's the same thing. When they hire me, I ask them to bring in when they come back --

MR. BAUER: Your Honor, I'm going to object as to relevance of pay stubs for contributions to the household --

MS. MALIN: It's not just -- we're going to --

THE COURT: But he said that he reviews the bank statement. He said -- I have already heard him testify that he does not remember Ms. Fraleigh, he does not remember talking to her beforehand. His normal practice is he had the bank statements, he has other bills. He has them fill out the form, and he has them come back. What else are we trying to find out?

MS. MALIN: Well, Your Honor, the idea would be whether or not he got six months of bank statements, six months of paycheck stubs as is required by the means test. I'm just simply trying to find out --

THE COURT: Didn't you get six months of the bank statements before you do the means test?

THE WITNESS: Of course, Your Honor. I actually have more than six months because as I say it carries on. So I have the initial six months and then I have to calculate every month going past that until the month of filing which doesn't count for the test, but I have to supply hat to the trustee.

And that I supplied six months and the present months to Trustee O'Toole as well as Andrea and I'm sure they're available to anyone as public record.

THE COURT: Okay.

BY MS. MALIN:

Q You sent me bank statements or did you just send them to Ms. O'Toole? I don't --

A I think in the letter it says --

Q To Ms. O'Toole.

A Right. Well, Trustee O'Toole of course gets the last two months of bank statements, plus the following -- the month that I followed it of pay stubs, I'm sorry.

Q That's fine --

MR. BAUER: I object as to relevance, Your Honor.

THE COURT: All right. Sustained. Yeah. This was the -- he said he forwarded the bank statements to Ms. O'Toole and gave the originals back to the client.

MS. MALIN: Yeah. He also said -- he did make his comment that he gave them to me, too, and I just wanted to clarify for the record he did not.

THE COURT: Okay. He was confused it was --

MS. MALIN: That's fine.

THE COURT: -- for the pay stubs.

MS. MALIN: That's fine.

THE WITNESS: Thank you, Your Honor.

BY MS. MALIN:

Q So it's you, Mr. Juran, who actually calculates the means test?

A Well, yes, in terms of immediate income?

THE COURT: Don't ask a question, please, Mr. Juran. Just answer it.

THE WITNESS: I'm sorry. Yes.

THE COURT: That's all right. Okay.

MS. MALIN: I'm just going through my questions, Your Honor.

THE COURT: Fine. Sounds like your household is pretty active there, Mr. Juran.

THE WITNESS: Thank you, Your Honor. I have a four and a five-year old. They're so excited with the Skype.

MS. MALIN: We're waiting to see them flash on.

THE COURT: I was going to say that would color into our --

THE WITNESS: My wife is trying to keep them away from the screen but you never know.

BY MS. MALIN:

Q So how much was the -- how much is like the average time that you spend with a client during the process of getting the petition completed and filed?

MR. ZIRT: Judge, I'm going to object to that. It's impossible to answer.

MR. BAUER: Objection as to relevance, Your Honor.

MS. MALIN: Well, let's see if he can answer it or not.

MR. BAUER: Objection as to relevance.

THE COURT: Sustained. Sustained.

MS. MALIN: Your Honor, I don't see whether it would not be relevant because basically what he's testified to today is that he looks at all these bank statements, all these paychecks, all of this information but if he's only spending a very limited time, that does go to his credibility as to whether or not he's actually spending that much time and since he does not remember Ms. Fraleigh actually and he files hundreds and hundreds of petition, he should be familiar with how much time it takes him on each one. I don't think that's an unfair question.

THE COURT: I will sustain the objection because I think it's on a case-by-case basis and if he files hundreds and hundreds, it's a case-by-case basis.

MR. BAUER: Thank you, Your Honor.

MS. MALIN: I guess I have no further questions, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. BAUER:

Q Hi, Mr. Juran. This is Thomas Bauer, attorney for the debtor, Donna Fraleigh. How are you?

A Good, Mr. Bauer. How are you, sir?

Q Very well. Thank you.

THE COURT: And, just so you know, Mr. Zirt is still right here.

THE WITNESS: Thank goodness. I had no doubt.

THE COURT: Go ahead.

MR. BAUER: Okay.

BY MR. BAUER:

Q Mr. Juran, would it be fair to say that when you calculate members of a household for a means test calculation, you would use what's called the IRS standard.

MS. MALIN: I object, Your Honor, on the grounds of what does that have to do with the contributions. That's been a limited issue. I've been limited to only that. He's testified he knows nothing about Mr. Sekul. He knows about the contributions. What does that matter?

THE COURT: Sustained.

MR. BAUER: I have no questions for this witness.

THE COURT: Very good. Any redirect?

MS. MALIN: No, Your Honor.

THE COURT: Very good. Mr. Juran, thank you very much. We appreciate you -- by Skype and we wish you well.

MS. MALIN: Thank you very much, Brian.

THE WITNESS: Thank you, Your Honor.

MR. BAUER: Thank you, Mr. Juran.

THE COURT: Take care. Bye-bye.

THE WITNESS: Bye-bye.

(Witness excused.)

THE COURT: Thank you, Vincent. Okay. What have we got now?

MS. MALIN: I just have one housekeeping issue quick, Your Honor --

THE COURT: Sure.

MS. MALIN: -- before he goes onto this case. The paycheck stubs that were marked as Exhibit 1, neither myself or Mr. Bauer were sure whether it got entered into evidence. However, it is no problem. Those are the paycheck stubs that --

THE COURT: Very good. Mr. Bauer, no objection?

MR. BAUER: No objection, Judge.

THE COURT: Put it in, please. Thank you.

(Plaintiff's Exhibit 1 in evidence.)

MR. ZIRT: Your Honor, I assume that --

THE COURT: Can we dismiss Mr. Zirt?

MR. BAUER: Thank you, Your Honor.

THE COURT: Anyone have any objection?

MS. MALIN: Well, I'd like him to stay all day.

THE COURT: Okay. Well, he has stayed all day.

THE COURT: Thank you, Mr. Zirt. We appreciate your appearance.

MR. ZIRT: Thank you, Your Honor.

THE COURT: Very good. Mr. Bauer?

MR. BAUER: Your Honor, am I on my direct case now?

THE COURT: I believe so. Are you -- have you closed your case?

MS. MALIN: Yes, Your Honor. I have no further witnesses.

THE COURT: Very good. And you've closed all your evidence and your case is finished.

MS. MALIN: Correct.

THE COURT: Very good. Mr. Bauer, it's up to you.

MR. BAUER: At this time, I'd like to call Donna Fraleigh, Your Honor.

THE COURT: Ms. Fraleigh, if you'll come back to the witness stand. Let me remind you that you are under oath.

DONNA MARIE FRALEIGH, DEFENDANT, PREVIOUSLY SWORN.

THE COURT: Very good. She's your witness.

DIRECT EXAMINATION

BY MR. BAUER:

Q Hi, Ms. Fraleigh.

A Hi.

THE COURT: Yeah. We all sort of wanted for the kids to say hello but go ahead.

BY MR. BAUER:

Q Okay. Ms. Fraleigh, who filled out your petition before you signed it?

A Mr. Juran did.

Q Mr. Juran. And who filled out the means test before you signed it?

A Mr. Juran.

Q Okay. Did you disclose to Mr. Juran your living arrangements with Mr. Sekul?

A Yes, I did.

Q Pre-petition.

A Yes, I did.

Q Okay. And, on cross-examination earlier, we had gone through a compilation of all of your expenses through bank statements and canceled checks. And now that we've had a chance to better see and reflect on this, would it be true to say that your payment of expenses to the household was much higher than fifty percent?

MS. MALIN: Objection, Your Honor. He's leading the witness and this is direct.

THE COURT: Could you reword that a bit?

MR. BAUER: Let me -- let me --

THE COURT: Yeah.

BY MR. BAUER:

Q Now that we've looked at the expenses, what percentage of the household expenses did you pay versus Mr. Sekul?

A Much higher percentage than I originally thought after going through everything.

Q Okay. But the rent you still paid fifty-fifty.

A   Correct.
Q   Okay. I would like you show the witness Exhibit -- Defendant's Exhibit D. This is a -- excuse me. Ms. Fraleigh, can you tell me what this is?
THE COURT: Thank you. You're not on cross. Good.
THE WITNESS: Yes. It's a check from credit card company that I wrote out. It's from Citibank AT&T. I wrote out to Hudson Valley Federal Credit Union for $3,000.
BY MR. BAUER:
Q   And what was the date of this?
A   October 30th, 2009.
Q   All right. I'm going to show you now Exhibit A, which are you bank statements.
THE COURT: Something has happened. I think we got the thing turned around. Oh, I've got the thing turned around. Never mind. Is your turned around?
THE WITNESS: Mine is fine.
THE COURT: Okay. It's just me.
MR. BAUER: Can we make it larger?
THE COURT: No.
MS. MALIN: No, it's just her screen is tilted --
THE COURT: He -- he took care of Ms. Malin's but he didn't take care of mine. Just so you know. Okay.
BY MR. BAUER:
Q   Okay. I'm going to circle --

THE COURT: Not that we're noticing. Okay.

BY MR. BAUER:

Q I'm going to circle here a payment transfer on October 30th to the L-38 account. That's a line of credit account.

A Correct.

Q Would the cash advance -- it says it went to the L-38, would this in fact be part of the $3,198.16 on this date?

A Yes, it would.

Q Okay. And would it be safe to say that this money was what Mr. Sekul had used to pay other house bills?

A Yes.

MR. BAUER: All right. I have no further questions for -- for this witness, Your Honor.

THE COURT: Very good. Ms. Malin?

MR. BAUER: Oh, I'm sorry, Your Honor. I wanted to enter into evidence Exhibit D, this --

THE COURT: Any objection, Ms. Malin?

MR. BAUER: The $3,000.

MS. MALIN: I don't have a problem with that --

THE COURT: So you have the --

(Counsel confer.)

CROSS-EXAMINATION

BY MS. MALIN:

Q Ms. Fraleigh, when we were looking at the bank statements wherein you made these transfers for ready cash, this is the bank -- this is your checking account bank statement that we were looking at before, correct?

A Well, the page you're showing me I believe has a ready cash --

THE COURT: It looks like a combination here.

THE WITNESS: Yeah. I think you have --

THE COURT: You've got Marshall's up --

THE WITNESS: -- I have the top of the check and the bottom I believe is the boat loan and the ready cash loan. So you have more than one thing on here.

BY MS. MALIN:

Q Well, it seems to run a balance here pretty high of approximately at this time $33,435.

A That's the boat loan.

THE COURT: That's the boat loan.

BY MS. MALIN:

Q That's the boat loan. Okay. The $24,464, what's that?

A I believe that's part of the -- if you flip to the prior page, the L-38 loan.

Q So this -- this basically the balance then that we see on the side here is the pay down of the boat?

A No. Your balance up top like I told you before is a checking account. The balances on the bottom if you read it L-14 is the boat loan and then it stops, and then it says L-38 ready cash loan, and that continues. The balance of that was

25,000. The next page, there it is. That's the ready cash line of credit you're looking at.

Q So who was pay -- who was making the payments of the ready cash credit?

A He was.

MR. BAUER: Objection, Your Honor; relevance. How --

THE COURT: Well, wait, I need some explanation here first. You had three accounts there, right? The check --

THE WITNESS: Four technically.

THE COURT: Okay. The checking, the savings --

THE WITNESS: Savings. The ready cash --

THE COURT: The ready cash, and that's a loan.

THE WITNESS: Correct.

THE COURT: And then --

THE WITNESS: The boat loan.

THE COURT: And then the boat loan. But you put some money out of your credit cards into the ready cash.

THE WITNESS: Right. It -- primarily for a clearing house way of getting that money faster and then I would leave money in that account for him to be able to use it for expenses on the house.

THE COURT: Okay.

THE WITNESS: Because it only took -- the same day you put it in, it was in there.

THE COURT: Okay. I understand. And you had said that before, but I was just --

THE WITNESS: Correct.

THE COURT: Okay. But there was 25,000 in there that y'all had borrowed actually jointly.

THE WITNESS: Well, it was his debt. My name -- it was the only way that he could get the loan. So I didn't pay the actual loan --

THE COURT: Of the 25,000.

THE WITNESS: Correct.

THE COURT: Okay. All right.

BY MS. MALIN:

Q So the money that you left in the account when you took cash advances off your --

A Credit cards?

Q -- credit cards was to go to what purpose? I'm sorry.

A To help pay expenses on the house that I didn't have money to give him money for. That's where I was getting the cash.

Q Okay. So then he was paying all of the household expenses during that period and you were just reimbursing him through these cash advances?

MR. BAUER: Objection, Your Honor.

THE COURT: Objection. That's not the testimony. He was -- he was paying some of them and she was reimbursing for some of them. Is that correct?

THE WITNESS: Yes, that is.

BY MS. MALIN:

Q So -- but you were not -- you were not reimbursing him for all of that.

A Well, some of them as I testified were in my name so I didn't have to. The DirecTV was in my name. The -- or the garbage pickup was in my name. So, no, not all of them.

Q So then, based upon what Mr. Bauer asked you which was now that you see this history of payments, it appears that you're paying -- you were paying all of the household expenses and he wasn't paying much of them at all? Just clarify --

A That was the question that he asked me, yes.

Q Yeah. What was the percentage you believed Mr. Sekul was --

A I didn't give a percentage. I said that I was paying much more of a percentage than I actually thought I was.

Q But you -- do you know what the household expenses were at the time, total?

MR. BAUER: Objection, Your Honor --

MS. MALIN: Because I think she testified she didn't know. Now she --

THE COURT: Ms. Malin, somebody stood up to object.

MS. MALIN: Okay.

MR. BAUER: Asked and answered. She's already testified that -- we've gone through the bank statements --

THE COURT: Yeah, I want to know what you're asking, Ms. Malin. We've already gone through everybody. We've set it all up. What are you trying to clarify here?

MS. MALIN: Just the percentage of contribution. So first --

THE COURT: And she's answered that. She said that now that she's gone through it as we've gone through it all today, she realizes that she's paid more than fifty percent. She went into this thinking that she was paying fifty percent but she says now she's realized she's paid more. So what's the question?

MS. MALIN: The question for my purposes is then the expenses that you were paying, were those the total household expenses? I just want to try to get what the gross household expense, and I don't think she's ever testified as to what that is. She now --

MR. BAUER: This is a big --

MS. MALIN: -- if I might just --

THE COURT: Let him -- let her finish, Mr. Bauer.

MS. MALIN: She's now saying that she paid more than half of the expenses but yet not -- neither her or Mr. Sekul has been able to testify as to what the actual expenses were. So I'm just trying to get a feel now that's --

THE COURT: Welcome to the world of bankruptcy. What's your objection?

MR. BAUER: The debtor has testified earlier that she doesn't remember the whole house expense and I --

THE COURT: We went through all the bank --

MR. BAUER: We went through all the bank records --

THE COURT: -- the bank -- so --

MR. BAUER: So I'm just having trouble --

THE COURT: I'm trying. We went through I and J. I'm trying, too. Because I'd like for you to ask any question you want to, but I'm not understanding the question myself. I've listened to all the testimony, too. So what -- and I hear your question but the questions you've asked have been asked and answered.

MS. MALIN: That's fine, Your Honor.

THE COURT: So what is it that you want to have this witness testify to?

MS. MALIN: Just to see whether or not now she's going through all her bank statements and has had this epiphany as to what she's been paying on a monthly basis. If maybe going through the bank statements has jogged her memory to her having an epiphany as to what he actually contributed. That's all I want to know.

THE COURT: Okay. Am I correct in what I see is she took out about $7,000 in cash advances to get for her support for her and the kids and I didn't see anything coming back.

MR. BAUER: Just to make the record clear, Your Honor --

THE COURT: Or there was $1,100 that come back -- 1,120 --

MS. MALIN: You asked him to ask her about that and I don't know if he did.

THE COURT: He didn't.

MR. BAUER: Part of that, yes, it was asked and it was answered. Part of the five-thousand-dollar cash -- if we could Exhibit A back up, October 30th. That's highlighted in yellow.

THE COURT: It's $4,000.

MR. BAUER: Four thousand dollars was transferred back into Ms. Raleigh's account to pay house bills where a thousand of this cash advance was kept for Mr. Sekul to pay other bills. And there was a second cash advance of $3,000 --

THE COURT: Okay. You're testifying. You're testifying. She needs to be testifying --

MR. BAUER: I just want to clarify the record that that's what the testimony was.

THE COURT: Okay. She needs to -- she needs to refresh her memory and testify to that, not you, and I think that's what Ms. Malin is asking. She did say that, but I think that's really what you're asking.

MS. MALIN: Yes.

THE COURT: Okay. Now then, let's go back again. Ms. Malin can ask the questions, but I'm going to ask them for a minute.

THE WITNESS: Okay.

THE COURT: After you've testified to day and after you've gone through all the counts, you have had an understanding of what you actually were doing during this time frame.

THE WITNESS: Correct.

THE COURT: And what has not been your understanding of what has happened during this six-month time frame?

THE WITNESS: That I've paid a lot more out for things than I had estimated or have seen at that time.

THE COURT: And that it wasn't necessarily quid pro quo. Is that what we've heard? In other words, you didn't necessarily get the money back after you paid it out.

THE WITNESS: Correct.

THE COURT: Now then, I put some words in her mouth. What would you like to clarify?

MS. MALIN: Well, Your Honor, at this point, I don't see the point to clarify it anymore --

THE COURT: Yeah, it just seems to me --

MS. MALIN: -- my questions --

THE COURT: Yeah, it just seems to me he wasn't really helping her. Yeah.

MS. MALIN: There was $1,100 that --

THE COURT: Eleven hundred and twenty and he gave her a $1.65 back.

THE WITNESS: Because he was pissed.

MS. MALIN: Right. And then it was something to -- I can't wait to pay you off.

THE COURT: That was the $1,120 --

MS. MALIN: And he was supposed to ask that on direct and he hasn't done that. So I can't really ask it on cross. So maybe he could clarify that.

THE COURT: I wanted to know about that $1,120 because --

MS. MALIN: What it meant.

THE COURT: -- because there was that $1.60 that came back because -- and there was 940 --

MS. MALIN: And forty-dollar one as well. Just --

THE COURT: Yeah. There are two in there I wanted you to clarify. She had two --

MR. BAUER: Your Honor, do you remember what that date was?

THE COURT: No, but she had two -- you could look for it easily. Ms. Malin has probably already got it up. They were in February. She got $1,120 from -- and testified to that she got it from Mr. Sekul and it was -- he made some kind of nasty remark when he gave it to her.

MS. MALIN: I'm looking because I think you told us --

THE COURT: It was February 2nd, I think. And then you saw another deposit of $1.64 because he overpaid for the drug test.

MS. MALIN: And I circled that one, Your Honor, so we have it. I'm just looking for this February --

THE COURT: And then there was another one of $1,000 minus the $60. Those were the ones that I wanted to know about.

MS. MALIN: I just circled them, Your Honor.

THE COURT: Put them there, yeah. All right. There was the 940. That was the $1,000 and you got $60 cash back. Do you recall that deposit?

THE WITNESS: No, I don't.

THE COURT: You don't recall a thousand-dollar deposit in February of '10?

THE WITNESS: (No verbal response.)

THE COURT: Do you -- how many deposits did you ever get from Mr. Sekul?

THE WITNESS: The only one I remember is the one with the stupid comment. Other than that, I don't know if that money came from him or somebody else.

THE COURT: Who would be somebody else that would give you a thousand dollars that you don't remember?

THE WITNESS: Well, it would either be my parents or my sister. That's the only other two people I've ever --

THE COURT: Would your parents give you a thousand dollars?

THE WITNESS: Yes, they would if I asked them to borrow it or if I needed it to pay bills.

THE COURT: And you're telling me today and your testimony today is that you don't recall asking your parents for a thousand dollars and then having them give it to you?

THE WITNESS: No, I don't. I mean, it's February -- a couple of years ago. I have no idea.

THE COURT: I have heard your testimony. Now then, let's look at the $1,100. Okay. That's 1,100. Sooner I pay you the better, $1,100.

THE WITNESS: Correct.

THE COURT: And that's definitely from Mr. Sekul.

THE WITNESS: Yes, it is.

THE COURT: And you want to explain that snippy remark?

THE WITNESS: Previously, the one cash advance I took that he used for household stuff he was upset with me -- don't remember exactly what at that time and so I needed money and so he put that money in and said sooner I pay you, better.

He felt that I gave him too much money which I gave him at the time because that's the last I could advance on that credit card. SO I gave him money and said take this for expenses that I know I'm going to have trouble paying. You know --

THE COURT: And so --

THE WITNESS: -- that's my portion. You know, I used this --

THE COURT: And so this is his -- this is him basically paying you back --

THE WITNESS: Some of that money --

THE COURT: -- for a credit card advance.

THE WITNESS: Some of that money back saying here.

THE COURT: But it was for a credit card advance.

THE WITNESS: That's where that money came from originally.

MS. MALIN: He was paying her for --

BY MS. MALIN:

Q I believe you testified that you were giving him regular contributions from the credit cards for your business -- excuse me, for your household expenses and this was him saying you gave me too much this money, here's it back.

A Exactly. Same as that comment about the dollar something.

Q The dollar sixty-five back on the twenty-dollar drug test?

A Yeah.

Q So there was --

A I didn't make the comments --

THE COURT: I am not Judge Judy, I don't get to make comments.

THE WITNESS: I don't live with him anymore.

BY MS. MALIN:

Q But between October 2009 and April 2010, were there any other times he might have felt you were taking away too much on your cash advances for purpose of paying his, yours, and your children's household expenses?
A No, I think that was it.
Q So he was okay with you paying all of the household -- or the majority of the household expenses except for this one time?

MR. BAUER: Objection; calls for speculation.

THE COURT: I know, but I think we've heard him testify and once she filed bankruptcy he was not happy. We've heard that already. So -- I see you.

MS. MALIN: Your Honor, I don't believe I have any --

THE COURT: Further questions?

MS. MALIN: -- of this --

THE COURT: Mr. Bauer, do you have any questions?

MR. BAUER: I have no further questions.

THE COURT: Are you complete with your --

MR. BAUER: Defendant rests at this time.

THE COURT: Very good. You may step down.

(Witness excused.)

MR. BAUER: Defendant would also like to move for a directed verdict at this time, Your Honor.

THE COURT: Yeah. I know.

MR. BAUER: The plaintiff has woefully failed to prove not only intent but to prove any contributions by Mr. Sekul which would have been material enough to change the debtor's means test, Schedule I or J in this petition.

THE COURT: Yeah. Ms. Malin?

MS. MALIN: Your Honor, I think based upon the testimony today and how the numbers add up, there's been no proof that -- there is no proof to the contrary that the means test was accurate or not accurate by the fact that I didn't give the expenses.

As you know, the means test does not go by the actual expenses. They're immaterial to the means test. The means test permits only the allowable bankruptcy expenses which are taken from the U.S. Trustee's comment of expenses. So going through the bank statements although that might provide support for what was on Schedule J, it did not provide any support for what was on the means test.

So it did not disprove the fact that the means test was filled out improperly. It was the means test that she did not -- he sat there and testified that he did contribute to her household expenses. She first said he contributed half, then she didn't know --

THE COURT: So I have to talk about credibility. Okay. Mr. Bauer, I hear you.

MR. BAUER: Let's assume for instance that the thousand dollars Mr. Sekul testified to that he paid towards the household --

THE COURT: Right.

MR. BAUER: -- that we include that in the means test, we now have a household of not three, but four.

MS. MALIN: It's not a household --

MR. BAUER: Under that -- under that combination in calculation of the means test, she -- the presumption would still not arise, but more importantly, Your Honor, and this is my point right from the beginning, the intent has to be proven here. This is not a motion under 707(b) --

THE COURT: That's true. It's not.

MR. BAUER: -- this is a more drastic remedy that plaintiff has chosen to have a debtor's discharge denied. We don't have intent. Without intent, plaintiff's case fails. Plain and simple. And, again, the defendant moves for a directed verdict at this time.

THE COURT: The Court is going to take a recess.

(Recess taken.)

(Proceedings resume.)

THE COURT: You're both right in many respects. And I understand you. I want to make sure we do it right, and I want to make sure that if we do have to have a record on appeal, it's going to be a good clean record. I'm going to allow post-trial briefs. Do you all intend to order a transcript?

MS. MALIN: I would assume that we would have to, Your

Honor.

THE COURT: Okay. The post-hearing briefs will be filed by close of business hours fourteen days after the transcript is filed.

MR. BAUER: Who will be ordering the transcript, Your Honor?

THE COURT: It's up to the two of you. You can't afford it, I know. It's up to the two of you.

MR. BAUER: And if no transcript is filed.

THE COURT: Then post-hearing briefs are due by the close of business fourteen days from today. So y'all need to talk and decide if you're all going to order a transcript.

MS. MALIN: If no transcript, it is fourteen days from --

THE COURT: Today.

MS. MALIN: Today?

THE COURT: I want your post-hearing briefs to be ten pages.

MS. MALIN: Okay.

THE COURT: Then I'm going to allow each of you to file reply briefs seven days after the post-trial briefs are filed and no further briefs will be permitted. No sur-replies on this.

Very good. Court is in recess.

MS. MALIN: Thank you, Your Honor.

MR. BAUER: Thank you, Your Honor.

THE CLERK: All rise.

(Concluded at 6:06 p.m.)

* * * * *

C E R T I F I C A T I O N

I, Ilene Watson, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my/our ability.

Ilene Watson DATE: May 3, 2012

ILENE WATSON, AAERT CERT. NO. 447

CERTIFIED COURT TRANSCRIPTIONIST

AD HOC TRANSCRIPTION, LLC

C E R T I F I C A T I O N

I, Cathryn Lynch, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my/our ability.

Cathryn Lynch DATE: May 3, 2012

CATHRYN LYNCH, NJ CERT NO. 565

CERTIFIED COURT TRANSCRIPTIONIST

AD HOC TRANSCRIPTION, LLC

C E R T I F I C A T I O N

I, LISA LUCIANO, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

Lisa Luciano DATE: May 3, 2012

LISA LUCIANO, AAERT NO. 327
CERTIFIED COURT TRANSCRIPTIONIST
AD HOC TRANSCRIPTION, LLC

C E R T I F I C A T I O N

I, KATHLEEN PRICE, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

Kathleen M. Price DATE: May 3, 2012

KATHLEEN PRICE, AAERT CERT. NO. 325
CERTIFIED COURT TRANSCRIPTIONIST
AD HOC TRANSCRIPTION, LLC